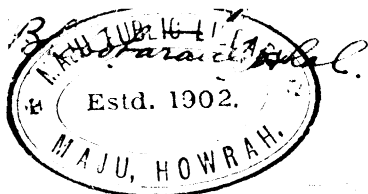

Estd. 1902.
MAJU, HOWRAH.



THE

CODE OF

CIVIL PROCEDURE.

(With the latest amendments)

CALCUTTA.

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1887.

THE

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GENERAL CONTENTS.

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THE

LAW MANUAL.

THE CODE OF CIVIL PROCEDURE.

ACT No. XIV. OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th March 1882.*)*

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

Short title.
Commencement.

1. This Act may be cited as "The Code of Civil Procedure:" and it shall come into force on the first day of June, 1882.

Local extent.

This section and section 3 extend to the whole of British India The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV. of 1874.

Interpretation-clause.
"chapter:"
"district:"
"District Court:"

2. In this Act, unless there be something repugnant in the subject or context—

"chapter" means a chapter of this Code:

"district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a 'District Court'), and includes

the local limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court; and every Court of Small Causes, shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court:

"pleader" — "pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court:

"Government Pleader" — "Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader:

"Collector" — "Collector" means every officer performing the duties of a Collector of land-revenue:

"decree" — "decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in secton 588, is within this definition: an order specified in section 588 is not within this definition:

"order" — "order" means the formal expression of any decision of a Civil Court which is not a decree as above defined:

"judgment" — "judgment" means the statement given by the Judge of the grounds of a decree or order:

"Judge" — "Judge" means the presiding officer of a Court.

"judgment-debtor" — "Judgment-debtor" means any person against whom a decree or order has been made:

"decree-holder" — "decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred:

"written :" "written" includes printed and lithographed, and "writing" includes print and lithograpy:

"signed :" "signed" includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the

person referred to :

"foreign Court." "foreign Court" means a Court situate beyond the limits of British India and not having authority in British India, not established by the Governor General in Council;

"foreign judgment:" "foreign judgment" means the judgment of a foreign Court:

"public officer." "public officer" means a person falling under any of the following descriptions (namely):—

every Judge;

every covenanted servant of Her Majesty,

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience;

every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document

relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

"Government."

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

Enactments repealed.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed, and framed hereunder.

References in previous Acts.

And when, in any Act, Regulation, or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the 'Code of Civil Procedure,' or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Saving of procedure in suits instituted before 1st June, 1882.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Appeals pending on 29th July, 1879.

Every appeal pending on the 29th day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under section 320, and every notification published before the same day, pur-

porting to be issued under section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Saving of certain Acts affecting Central Provinces, Burmah, Punjab and Oudh.

4. Save as provided in the second paragraph of section 3 nothing herein contained shall be deemed to affect the following enactments (namely:—

The Central Provinces Courts Act, 1865:

The Burma Courts Act, 1875:

The Panjab Courts Act, 1877:

The Oudh Civil Courts Act. 1879:

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where, under any of the said Acts, concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall for the purposes of this Code, be deemed to be the District Court

Sections extending to provincial Small Cause Courts.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapter and sections of the Code do not extend to such Courts.

Saving of jurisdiction and procedure—

(a) of Military Courts of Request;

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request;

(b) of officers appointed to try small suits in Bombay;

(b) of a single officer duly appointed in the Presidency of Bombay to try small suits in military bazars at cantonment and stations occupied by the troops of that Presidency; or

(c) of Village Munsifs and Village Panchayats in Madras.

(c) of village Munsifs or Village Panchayats under the provisions of the Madras Code;

(d) of Recorder of Rangoon sitting as Insolvent Court.

(*d*) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmein, Akyab, or Bassein,

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Saving on certain Bombay laws.

7. With respect to.

(*a*) the jurisdiction exercised by certain jagirdars and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act XV of 1840 in the cases therein mentioned; and

(*b*) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

Presidency Small Cause Courts.

8. Save as provided in sections 3, 25, 86,' 223, 225, 386, and chapter XXXIX, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

Division of Code.

9. This Code is divided into ten parts as follows:—

The first part: Suits in General.

The Second part :	Incidental Proceedings.
The third part :	Suits in particular Cases.
The fourth Part :	Provisional Remedies.
The fifth Part :	Special Proceedings.
The sixth Part :	Appeals.
The seventh Part :	Reference to and Revision by the High Court.
The eighth Part :	Review of Judgment.
The ninth Part :	Special Rules relating to the Chartered High Courts.
The tenth Part	Certain Miscellaneous Matters.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

No person exempt from jurisdiction by reason of descent or place of birth.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding, exempted from the jurisdiction of any of the Courts.

Courts to try all civil suits unless specially barred.

The Courts shall (subject to the provisions herein contained have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

pending suits.

12. Except where a suit has been stayed under section 20 the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between

the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having Jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor-General in Council and having like jurisdiction, or before Her Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the courts in British India from trying a suit founded on the same cause of action.

Res Judicata,"

13. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of Jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Explanation I.—The matter above referred to must, in the former suit, have been alleged by one party, and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bona fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is persumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(*a*) if it has not been given on the merits of the case:

(*b*) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

(*c*) if it is, in the opinion of the Court before which it is produced, contrary to natural justice:

(*d*) If it has been obtained by fraud:

(*e*) if it sustains a claim founded on a breach of any law in force in British India.

CHAPTER II.

OF THE PLACE OF SUING.

Court in which suit to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitation prescribed by any law, suits

(*a*) for the recovery of immoveable property,

(*b*) for the partition of immoveable property,

(*c*) for the foreclosure or redemption of a mortgage of immoveable property,

(*d*) for the determination of any other right to, or interest in, immoveable property,

(*e*) for compensation for wrong to immoveable property,

(*f*) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property, held by or on behalf of the defendant, may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business or personally works, for gain.

Explanation.—In this section 'property means property situate in British India.

Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a court within the local limits of whose jurisdiction —

(*a*) the cause of action arises, or

(*b*) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(*c*) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place, and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British

India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(*a*) A is a tradesman in Calcutta. B carries on business in Dehli. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta, A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Dehli, where B carries on business.

(*b*) A resides at Simla, B at Calcutta, and C at Dehli. A, B and C being together at Beneras, B and C make a joint promissory-note payable on demand, and deliver it to A. A may sue B and C at Beneras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Dehli, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

Suits for compensation for wrongs to person or moveables.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may, at his option, sue in either of the said Courts.

Illustrations.

(*a*) A, residing in Dehli, beats B in Calcutta. B may sue A either in Calcutta or in Dehli.

(*b*) A, residing in Dehli, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Dehli.

(*c*) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the company. He may sue the company either at Howra or at Allahabad.

Suits for immoveable property situate in single district, but within jurisdiction of different Courts.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any poriton of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such court.

Suits for immoveable property situate in different districts.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

Power to stay proceedings where all defendants do not reside within jurisdiction.

20. If a suit which may be instituted in more than one Court is instituted in a court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the court to stay proceedings, apply to the Court accordingly;

And if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Application when to be made.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any Court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

Remission of court-fee where suit instituted in another Court.

22. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure where Courts in which suit may be instituted subordinate to same appellate Court.

23 Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections (if any), filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, (if any), of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure where they are not so subrodinate.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

Procedure where they are subordinate to different High Courts.

If the suit is brought in any Court subordinate to a District Court, the application together with the objections, (if any), filed by the other parties, shall be submitted through the District Court to which such Court is subordinate ;

and such High Court shall, after considering the objections (if any), of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

Transfer of suits

25. The High Court or District Court may, on the application of any of the parties, after giving notice to the parties, and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter

For the purposes of this section, the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the Dristrict Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS, AND ACTS.

Persons who may be joined as plaintiffs.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any per-

son who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

Court may substitute or add plaintiff for or to plaintiff suing

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be laible, according to their respective liabilities, without any amendment.

Persons who may be joined as defendants.

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis, and premissory notes.

Joinder of parties liable on same contract.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the insititution of the suit to all such parties either by personal service or if from the number of parties or any other cause such service is not reasonably practicable), by public advertisement, as the Court in each case may direct.

One party may sue or defend on behalf of all in same interest.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit eal with the matter in controversy so far as regards the rights and interest of the parties actually before it.

Suit not to fall by reason of misjoinder.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

Court may dismiss or add parties.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendent, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Consent of person added as plaintiff or next friend.

No person shall be added as a plaintiff, or as the next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

Defendants added to be served.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceeding against them shall be deemed to have begun only on the service of such summons.

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

Where defendant added, plaintiff to amend,

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the

new defendant and the original defendants.

Time for taking objections as to non-joinder or misjoinder.

34 All objections for want of parties or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

Each of several plaintiffs or defendants may authorize any other to appear, &c., for him.

35.. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Code: and in like manner, when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding.

Authority to be in writing signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court

Recognized Agents and Pleaders.

Appearances, &c., may be in person, by recognized agent, or by pleader,

36. Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party to a suit or appeal in such court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person, if the Court so direct.

Recognised agents.

37. The recognised agents of parties by whom such appearances, applications, and acts may be made or done, are—

Persons holding powers-of-attorney from parties out of jurisdiction.

(a) Persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, authorising them to make and do such appearances, applications, and acts on behalf of such parties;

Certificated mukhtars.

(b) mukhtars duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtars;

Persons carrying on trade or business for parties out of jurisdiction.

(c) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application, or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications, and acts.

Recognized agents in Panjab, Oudh and Central Provinces.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjab, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications, and acts may be made and done shall be such persons as the Local Government may from time to time, by notification in the official Gazette, declare in this behalf.

Service of process on recognized agent.

38. Processes served on the recognized agent of a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid, shall be in writing, and such appointment shall be filed in Court.

Appointment of pleader.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

40. Processes served on the pleader of any party, or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Service of process on pleader.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Agent to receive process.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

His appointment to be in writing and to be filed in Court.

CHAPTER IV.

OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to be framed.

Suit to include whole claim.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to sue for one of several remedies.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies he shall not afterwards sue for the remedy so omitted.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

Only certain claims to be joined with suit for recovery of land.

44. *Rule a.*—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, or to obtain a declaration of title to immoveable property, except—

(*a*) claims in respect of mesne profits or arrears of rent in respect of the property claimed,

(*b*) damages for breach of any contract under which the property or any part thereof is held, and

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage.

Rule b.—No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator, or heir, or are such as he was entitled to or liable for, jointly with the deceased person whom he represents.

Claims by or against executor, administrator or heir.

45. Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

Plaintiff may join several causes of action.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

Court may order separation.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may, at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining

Defendant may apply to confine suit.

the suit to such of the causes of action as may be conveniently disposed of in one suit.

Court on hearing application, may exclude some causes, and order amendment.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V.

OF THE INSTITUTION OF SUITS.

Suits to be commenced by plaint.

48 Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

Language of plaint.

49 The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in Court.

Particulars to be contained in plaint.

50. The plaint must contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description, and place of residence of the defendant, so far as they can be ascertained;

(*d*) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(*e*) a demand of the relief which the plaintiff claims; and

(*f*) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne-profits and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

Where plaintiff sues as representative.

When the plaintiff sues in a representative character, the plaint should shew, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(*a*) A sues as B's executor. The plaint must state that A has proved B's will.

(*b*) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(*c*) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to mahammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

Defendant's interest and liability to be shown.

The plaint must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must shew that B has cause-

lessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

Grounds of exemption from limitation-law.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must shew the ground upon which exemption from such law is claimed.

Plaints to be signed and verified.

51. The pliant shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

Provided that, if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

Contents of verification.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Verification to be signed and attested.

The verification shall be signed by the person making it.

When plaint may be rejected, returned for amendment, or amended.

53. The plaint may, at the discretion of the Court, and at or before the first hearing, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

(*a*) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(*b*) if it contains any particulars other than those so required; or

(*c*) if it is not signed and verified as hereinbefore required; or

(*d*) if it does not disclose a cause of action; or

(*e*) if it is not framed in accordance with section 42; or

(*f*) if it is wrongly framed by reason of non-joinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit:

Proviso.

Provided that a plaint can not be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Attestation of amendment.

When a plaint is amended, the amendment shall be attested by the signature of the Judge.

When plaint shall be rejected.

54 The plaint shall be rejected in the following cases:—

(*a*) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(*b*) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(*c*) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

(*d*) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Procedure on rejecting plaint.

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

When rejection of plaint does not preclude presentation of fresh plaint.

56 The rejection of the plaint on any of the grounds herein before mentioned shall not, of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

57. The plaint shall be returned to be presented to the proper Court in the following cases :

When plaint shall be returned to be presented to proper Court.

(a) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law :

(b) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented :

(c) if, in any other case, it appears that the cause of action did not arise, and that none of the defendants are dwelling, or carrying on business, or personally working for gain, within such local limits :

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on returning plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto a memorandum of the documents (if any) which he has produced along with it ; and if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him, to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Procedure on admitting plaint.

Concise statement.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies of statements if, on examination, he finds them to be correct.

Register of suits.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose, and called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

Production of document on which plaintiff sues. Delivery of document or copy.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall, at the same time, deliver the document, or a copy thereof, to be filed with the plaint.

List of other documents.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

Suits on los negotiable instruments.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had, at the same time, delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, and attesting the copy if found correct, shall return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

63. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

CHAPTER VI.

OF THE ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

Summons.

64. When the plaint has been registered, and the copies or concise statments required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint, and admitted the plaintiff's claim.

Copy or statement annexed to summons.

65. Every such summons shall be accompained with one of the copies or concise statements mentioned in section 58.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

No party to be ordered to appear in person unless resident within 50 or, where there is railway, 200 miles.

67. party shall be ordered to appear in person unless he resides.

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty, or where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

Summons to be either to settle issues or for final disposal.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit ; and the summons shall contain a direction accordingly :

Provided that, in every suit heard by Courts of small Causes, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

Delivery of summons for service.

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

Mode of service.

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

Service on several defendants.

74. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable onwrg

in respect of which relief is claimable from the firm, the service may be made, unless the Court directs otherwise, either (*a*) on one defendant for himself and for the other defendants, or (*b*) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

Service to be on defendant in person when practicable, or on his agent.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case, service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

Service on agent in charge, in suits for immoveable property.

77. In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

When service may be on male member of defendant's family.

78. If in any suit the defendant cannot be found, and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this section.

Person served to sign acknowldgment.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service,

80. If the defendant or orther persons refuses to sign the acknowledgment,

or cannot be found.

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made.

The serving-officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides, and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

Endorsement of time and manner of service.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, the time when, and the manner in which the summons was served.

Examination of serving officer,

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served, or order such service as it thinks fit.

Substituted service.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that, for any other reason, the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

Effect of substituted service.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

When service substituted, time for appearance to be fixed.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another court and has no agent to accept service.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

86. Whenever any process, issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon, is to be served within such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served.

Service, within Presidency towns and Rangoon, of process issued by Provincial Courts.

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served upon the defendant.

Service on defendant in jail.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail, and by the defendant.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Procedure if jail be in different district.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service when defendant resides out of British India, and has no agent to accept service.

Service through British Resident or Agent of Government.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner herein before directed, such endorsement shall be conclusive evidence of the service.

Substitution of letter for summons.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

Mode of sending such letter.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Service of Process.

Process to be served at expense of party issuing.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.

The Court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Notices and orders in writing how served.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

Postage.

Postage.

95. Postage, where chargeable on any notice, summons, or letter issued under this Code, and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Provided that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

Parties to appear on day fixed in summons for defendant to appear and answer.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

97 If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the Court fee leviable for such service, the Court may order that the suit be dismissed:

Proviso.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent when he is allowed to appear by agent.

If neither party appears, suit to be dismissed.

98. If, on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

In such case plaintiff may bring fresh suit;

or Court may restore suit to its file.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law or limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal, and appoint a day for proceeding with the suit.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

99A. If, after a summons has, whether before or after the first day of June, 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons, and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

Procedure if only plaintiff appears,

100. If the plaintiff appears, and the defendant does not appear, the procedure shall be as follows:

when summons duly served,

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte*:

when summons not duly served.

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant:

when summons served, but not in due time.

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

Procedure where defendant only appears.

102. If the defendant appears, and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been

admitted, shall dismiss the suit so far as it relates to the remainder.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint day for proceeding with the suit

Decree against plaintiff by default bars fresh suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

104. If on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Procedure where defendant residing out of British India does not appear.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit

Procedure in case of non-attendance of one or more of several plaintiffs.

106 If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect

Procedure in case of non-attendance of one or more of several defendants.

to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shewn, of party ordered to appear in person.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Of setting aside Decrees ex parte.

Setting aside decree ex parte against defendant.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside;

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

No decree to be set aside without notice to opposite party.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

CHAPTER VIII.

Of Written Statements and Set-off.

Written statements.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if, in such claim of the defendant against the plaintiff, both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless, permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off . . .

Particulars of set-off to be given in written statement.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Inquiry.

Such set-off shall have the same effect as a plaint in a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross-claim; but it shall not affect the lien upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Effect of set-off.

Illustrations.

(*a*) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies, and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(*b*) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(*c*) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods, and is liable to him in compensation, which he claims to set-off. The amount, not being ascertained, cannot be set-off.

(*d*) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims, being both definite pecuniary demands, may be set-off.

(*e*) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(*f*) A and B sues C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(*g*) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(*h*) A owes the partnership-firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

No written statement to be received after first hearing.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

Provisoes.

Provided that the Court may, at any time, require a written statement, or additional written statements, from any of the parties, and fix a time for presenting the same:

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

Procedure when party fails to present written statement called for by Court.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

Frame of written statements.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

Written statements to be signed and verified.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified.

Power of Court as to argumentative, prolix, irrelevant written statements.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

Attestation of amendments.

When any amendment is made under this section, the Judge shall attest it by his signature.

When a statement has been rejected under this section the

Effect of rejection.

party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

CHAPTER IX.

OF THE EXAMINATION OF THE PARTIES BY THE COURT.

Ascertainment whether allegations in plaint and written statements admitted or denied.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not, expressly or by necessary implication admitted or denied by the party against whom they are made. The Courts shall record such admissions and denials.

Oral examination of party, or companion of himself or his pleader.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any meterial questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put, in the course of such examination, questions suggested by either party.

Substance of examination to be written.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to answer.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may

postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING, AND RETURN OF DOCUMENTS.

Power to deliver interrogatories.

121. Any party may, at any time, by leave of the Court, deliver, through the Court, interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer :

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement, and such statement has been received and placed on the record.

Service of interrogatories.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of section 79, 80, 81 and 82 shall, in the latter case, apply, so far as may be practicable.

Inquiry into propriety of exhibiting interrogatories.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories ; and if it thinkts that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the

costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

124. If any party to a suit be a body corporate or a joint-stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

Service of interrogtories on officer of corporation or company.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bona fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

Power to refuse to answer interrogatories as irrelevant &c.

126. Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof, or within such further time as the Judge may allow.

Time for filing affidavit in answer.

127. If any person interrogated omits or refuses to answer or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further, either by affidavit or by *viva voce* examination as the Judge may direct: Provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Procedure where party omits to answer sufficently.

128. Either party may, by a notice through the Court

Power to demand admission of genuineness of documents.

within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party or his pleader and filed in Court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

Power to order discovery of document.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Affidavit in answar to such order.

Every affidavit made under this section shall specify which, (if any), of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

Power to order production of documents during suit.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

131. Any party to a suit may, at any time before or at the hearing thereof, give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

Notice to produce for inspection documents referred to in plaint, &c.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Consequence of non-compliance with such notice.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Party receiving such notice to deliver notice when and where inspection may be had.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

Application for order of inspection.

134. Except in the case of documents referred to in the plaint, written statement, or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit, shewing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they

Application to be founded on affidavit.

are in the possession or power of the party against whom the application is made.

135 If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery of inspection depends on the determination of any issue or question in dispute in the suit, or that, for any other reason, it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

Power to order issue or question on which right to discovery depends to be first determined.

136. If any party fails to comply with any order under this chapter, to answer interrogatories, or for discovry, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence (if any) struck out, and to be placed in the same position as if he had not appeared and answered;

Consequences of failure to answer or give inspection.

and the party interrogating, or seeking discovery, production, or inspection, may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories, or for discovery, production, or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

137. The Court may, of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Court may send for papers from its own records or from other Courts.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, showing how the record is material to

the suit in which the application is made, and that the applicant cannot, without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which, under the Indian Evidence Act, 1872, would be inadmissible in the suit.

Documentary evidence to be in readiness at first hearing.

138. The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Effect of non-production of documents.

139. No documentary evidence in the possession or power of any party, which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings, unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

Documents to be received by Court.

140. The Court shall receive the documents respectively produced by the parties at the first hearing provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct.

Rejection of irrelevant or inadmissible documents.

The Court may, at any stage of the suit, reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

No documents to be placed on record unless proved.

141 No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force.

Proved documents to be marked and filed.

Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record:

Entries in shop-books.

Provided that, if the document be an entry in a shop-book, or other book, the party on whose behalf such book is produced may furnish a copy of the entry which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court, shall mark the entry, and shall then return the book to the person producing it.

All documents produced at the first hearing and not so proved or admitted, shall be returned to the parties respectively producing them.

Rejected documents to be marked,

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

and returned.

The document shall then be returned to the party who produced it.

Court may order any document to be impounded.

143. Notwithstanding anything contained in sections 2, 141 and 142, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

When document admitted in evidence may be returned.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any

person, whether a party to the suit or not, desirous of receving back any document produced by him in the suit, and placed on the record, shall, unless the documment is impounded under section 143, be entitled to receive back the same :

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original :

When document may be returned before time limited.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

Certain documents not to be returned.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt book to be kept for the purpose.

Receipt to be given for returned document.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Provisions as to documents applied to material objects.

CHAPTER XI.

Of the Settlement of Issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds : (*a*) issues of fact, (*b*) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, (if any) and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the

issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed.

147. The Court may, frame the issues from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any person present on their behalf, or made by the pleaders of such parties or persons;

(b) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Power to amend, add, and strike out issues.

149. The Court may at any time before passing a decree, amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing

(*a*) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement.

(*b*) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(*c*) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper;

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a substantial interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided,

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and upon the judgment so given, decree shall follow, and may

be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

Disposal of the Suit at the first Hearing.

If parties not at issue on any question of law or fact.

152. If, at the first hearing of a suit, it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

If one of several defendants be not at issue with plaintiff.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants

If parties at issue on questions of law or fact.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

Court may determine issue.

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

and pronounce judgment.

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present, and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment,

155. If the summons has been issued for the final disposal of the suit, and either party fails, without sufficient cause, to produce the evidence on which he relies, the Court may at once pronounce judgment,

or adjourn suit.

or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

Of Adjournments.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to any of them, and may, from time to time, adjourn the hearing of the suit.

Costs of adjournment.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Procedure if parties fail to appear on day fixed.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by chapter VII, or make such other order as it thinks fit.

Court may proceed notwithstanding either party fails to produce evidence, &c.

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has

been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

Summons to attend to give evidence or produce documents.

159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witnesses to be paid into court on applying for summons.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance.

Scale of expenses.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Tender of expenses to witness.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in.

162. If it appear to the Court or to such officer as it appoints in this behalf, that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party

obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses if witness detained more than one day.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Time, place, and purpose of attendance to be specified in summons.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce document.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Power to require persons present in Court to give evidence.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the

Summons how served.

defendant; and the rules contained in chapter VI as to proof of services shall apply in the case of all summonses served under this section.

Time for serving summons.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Attachment of property of absconding witness.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service;

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be afixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness appears, attachment may be withdrawn.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall

direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

Procedure of witness fails to appear.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein the Court may impose upon him such fine, not exceeding five hundred rupees, as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine (if any):

Provided that, if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

Court may of its own accord summon as witnesses strangers to suit.

171. Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

173. No person so summoned and attending shall depart

When they may depart.

unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart.

Consequences of failure to comply with summons.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of his section.

Procedure when witness apprehended can not give evidence or produce documents.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail, or security being given, may release him.

Procedure when witness absconds.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170, shall, *mutatis mutandis*, apply.

Persons bound to attend in person.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(*a*) within the local limits of its ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court situate) two hundred miles distant from the Court-house

Consequence of refusal of party to give evidence when called on by Court.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may, in its discretion, either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

Rules as to witnesses to apply to parties summoned.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

CHAPTER XV.

OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

Statement and production of evidence by party having right to begin.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Rules as to right to begin.

Explanation.—The plaintiff has the right to begin, unless where the defendant admits the facts alleged by the plaintiff, and contends that, either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Statement and production of evidence by other party.

180. The other party shall then state his case and produce his evidence (if any).

Reply by party beginning.

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues, or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

181. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

How evidence shall be taken in appealable cases.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same, and shall sign it.

When deposition to be interpreted.

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

Memorandum when evidence not taken down by Judge.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and

such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

When evidence may be taken in English.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

Any particular question and answer may be taken down.

186. The Court may, of its own motion, or on the application of any party or his pleader, take down, or cause to be taken down any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

Questions objected to and allowed dy Court.

187. If any question put to a witness be objected to by party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection, and the name of the person making it, together with the decision of the Court thereon.

Remarks on demeaneur of witnesses.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Judge unable to make such memorandum to record reason of his inability.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made

Power to deal with evidence taken down by Judge removed before conclusion of suit.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Power to examine witness immediately.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may, at any stage of the suit, re-call any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act,) put such questions to him as the Court thinks fit.

Court may re-call and examine witness.

CHAPTER XVI.

OF AFFIDAVITS.

194. Any Court of first instance and any appellate Court may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Power to order any point to be proved by affidavit.

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of declarant for cross-examination.

195. Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance, for cross-examination, of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code from personal appearance in Court, or the Court otherwise directs.

Matters to which affidavits shall be confined.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of declarant by whom to be administered.

197. In the case of any affidavit under this Code—

(*a*) any Court or Magistrate, or

(*b*) any officer whom a High Court may appoint in this behalf, or

(*c*) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath of the declarant.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken, and

Judgment when pronounced.

the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor, but not pronounced.

Language of judgment.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

Translation of judgment.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

Judgment to be dated and signed.

202. The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of small Cause Courts.

203. The judgments of the Courts of small causes need not contain more than the points for determination and the decision thereupon.

Judgments of other Courts.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to state its decision on each issue.

Exception.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Date of decree.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Contents of decree.

206. The decree must agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

Power to amend decree.

If the decree is found to be at variance with the judgment, or if any clerical or arithmatical error be found in the decree, the Court shall, of its own motion, or on that of any of the parties, amend the decree, so as to bring it into conformity with the judgment, or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

Decree for recovery of portion of immoveable property.

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of moveable property.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an altarnative if delivery cannot be had.

In suits for money, decree may order certain interest to be paid on principal sum adjudged.

209. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period

prior to the institution of the suit, with further interest as such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

210. In all decrees for the payment of money, the Court may, for any sufficient reason, order that the amount shall be paid by instalments, with or without interest.

Decree may direct payment by instalments.

And, after the passing of any such decree, the Court may, on the application of the judgment-debtor, and with the consent of the decreeholder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant or the taking of security from him, or otherwise, as it thinks fits :

Order, after decree, for payment by instalments.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

211. When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

In suit for land, Court may decree payment of mesne profits with interest.

Explanation.— 'Mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

212 When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree

Court may determine amount of mesne profits prior to suit, or may reserve inquiry.

for the property, and direct an enquiry into the amount of mesne profits, and dispose of the same on further orders.

Administration-suit.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent,

and all persons who, in any such case, would be entitled to be paid out of such property, may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code,

Applications under section 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section.

Suit to enforce right of pre-emption.

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into Court, the decree shall specify a day on or before which it shall be so paid, and shall declare that, on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that, if such money and costs are not so paid, the suit shall stand dismissed with costs.

Suit for dissolution of partnership.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and di-

recting such accounts to be taken and other acts to be done as it thinks fit.

Suit for account between principal and agent.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Decree when set-off is allowed.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Effect of decree as to sum awarded to defendant.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Certified copies of judgment and decree to be furnished.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

CHAPTER XVIII.

Of Costs

Costs of applications.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Judgment to direct by whom costs to be paid.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Power of Court as to costs.

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree, may be excuted as if it were a decree for money.

Costs may be set-off against sum admitted or found to be due.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Interest on costs.

Payment of costs out of subject-matter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per anum, and may direct that costs with or without interest be paid out of, or charged upon, the subject-matter of the suit.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A—Of the Court by which Decrees may be executed.

223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

Court by which decree may be excuted.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(*a*) if the person against whom the decree is passed actually

and voluntarily resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree, and has property within the local limits of the jurisdiction of such other Court, or

(*c*) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(*d*) if the Court which passed the decree considers, for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may, of its own motion, send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay, or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay, or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (*a*), (*b*), and (*c*) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send

(*a*) a copy of the decree;

(*b*) a certificate setting forth that satisfaction of the decree has not been obtained

by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extend to which satisfaction has been obtained and what part of the decree remains unexecuted ; and

(c) a copy of any order for the execution of the decree, and, if no such order has been made a certificate to that effect.

Court receiving copies of decree, &c., to file same without proof.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

Execution by High Court, of decree transmitted by other Court.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Powers of Court in executing transmitted decree.

Appeal from orders in executing such decrees.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Decrees of Courts established by Government of India in Native States.

229. A decree of any Court established by the authority of the Governor General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made,

may be executed in manner herein provided within the jurisdiction of any Court in British India.

B.—Of Application for Execution.

Application for execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely)—

(*a*) the date of the decree sought to be enforced, or of the decree (if any) on appeal affirming the same, or

(*b*) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

Application by joint decree-holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application by transferee of decree.

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder

Provided as follows :—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution :

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

Transferee to hold subject to equities enforceable against original holder.

233. Every transferee of a degree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

If judgment-debtor die before execution, application may be made against his representative.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands, and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion, or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

Contents of application for execution of decree.

235. The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain, in a tabular form, the following particulars (namely)—

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;

(f) whether any and what previous applications have been made for execution of the decree and with what result;

(g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;

(h) the amount of costs, if any, awarded;

(i) the name of the person against whom the enforcement of the decree is sought; and

(j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

Application for attachment of moveable property to be accompanied with inventory.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor, but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share for interest therein to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Further particulars when application is for attachment of immoveable property.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

When application must be accompanied by extract from Collector's register.

C.—Of staying Execution.

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

When Court may stay execution.

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of discharge of such property or person pending the result of the application for such order.

240. Before passing an order under section 239 to stay

Power to require security from, or impose conditions upon, judgment-debtor.

execution, or for the restitution of property or the di charge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Liability of judgment-debtor discharged to be retaken.

241. No discharge under section 239 of the property or person of a judgment-debt r shall prevent it or him from being retaken in execution of the decree sent for execution.

Order of Court passing decree or of Appellate Court to be binding upon Court applied to.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Stay of execution pending suit between decree-holder and judgment-debtor.

243. If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree.

224. The following questions shall be determined by order of the Court executing a decree, and not by separate suit (namely)—

(*a*) questions regarding the amount of any mesne profits as to which the decree has directed inquiry ;

(*b*) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the executian of the decree, or the expiration of three years from the date of the decree ;

(*c*) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne-profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

E.—Of the Mode of executing Decrees.

Procedure on receiving application for execution of decree.

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case, have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

Procedure on admitting application.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

Cross-decrees.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III—This section does not apply, unless the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other, and each party fills the same character in both suits; and the sums due under the decrees are definite.

Illustrations.

(*a*) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(*b*) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(*c*) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs 1,000. B cannot treat C's decree as a cross-decree under this section.

Cross-claims under same decree.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to show cause why decree should not be executed.

248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(*a*) if more then one year has elapsed between the date of the decree and the application for its execution, or

(*b*) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Proviso.

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgement-debtor, if upon a previous application for execution against the same person, the Court has ordered execution to issue against him.

Explanation.—In this section the phrase "the Court" means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

Procedure after issue of notice.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit.

Warrant when to issue.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

Date, signature, seal and delivery.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court adpoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be excuted.

And a day shall be specified in warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

Decree against representative of deceased for money to be paid out of deceased's property.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property:

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

Decree against surety.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

Decree for money.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

Decree for mesne profits or other matter, amount of which to be subsequently ascertained.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has

been ascertained, be attached as in the cases of an ordinary decree for money.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

(*a*) into the Court whose duty it is to execute the decree; or

(*b*) out of Court to the decree-holder, or

(*c*) otherwise as the Court which made the decree directs.

Agreement to give time to judgment-debtor.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void, unless it is made for consideration and with the sanction of the Court which passed the decree and such Court deems the consideration to be under the circumstances reasonable.

Agreement for satisfaction of judgment-debt.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

Payment to decree-holder.

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in

pursuance of an agreement of the nature mentioned in section 257A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after the service of such notice, the decree-holder fails to appear on the day fixed, or, having appeared, fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

Decrees for specific moveables, or recovery of wives.

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property, or by both imprisonment and attachment, if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

Decree for specific performance or restitution of conjugal rights.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of, or abstention from, any other particular act, has been made, has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree, and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree, and paid all costs of executing the same, which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

Decreee for execution of conveyances, or endorsement of negotiable instruments.

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be m de within such time (mentioning it) as th Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute, the duplicate so altered :

Provided that, if any party object to the draft so served as aforesaid, his objections shall within the time so fixed, be stated in writing, and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

Form and effect of execution of conveyance by Court.

262. The execution of a conveyance, or the endorsement of a negotiable instrument by the Court under the last preceding section, may be in the following form : " *C. D.*, Judge of the Court of (*or as the case may be*) for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the n veyance or endorsement of the instrument by the party ordered to execute or endorse the same.

Decree for immoveable property.

263. If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of immoveable property when in occupancy of tenant.

264. If the decree be for the delivery of any immoveable property, in the occupancy of a tenant or other person entitled to occupy the same or not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property.

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Partition of estate or separation of share.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the state or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

F.—Of Attachment of Property.

Property liable to attachment abd sale in execution of decree.

266. The following property is liable to attachment and sale in execution of a decree (namely,) lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds or other securities for money, debts share in the capital or joint-stock of any railway, banking or other public Company or Corporation, and except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of of the judgment-debtor or by any other person in trust for him or in his behalf :

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

(*a*) the necessary wearing apparel of the judgment-debtor, his wife and children ;

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court, be necessary to enable him to earn his livelihood as such :

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists ;

(*d*) books of account ;

(*e*) mere rights to sue for damages ;

(*f*) any right of personal service ;

(*g*) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;

(*h*) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount;

(*i*) the pay and allowances of persons to whom the Native Articles of war apply;

(*j*) the wages of labourers and domestic servants;

(*k*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*l*) a right to future maintenance.

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*), and (*j*) are exempt from attachment or sale, whether before or after they are actually payable;

Provided also that nothing in this section shall be deemed

(*a*) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(*b*) to affect the Army Act, 1881, or any similar law for the time being in force.

Power to summon and examine persons as to property liable to be seized.

267. The Court may, of its own motion, or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Attachment of debt, share and other property not in possession of judgment-debtor.

268. In the case of (*a*) a debt not secured by a negotiable instrument, (*b*) a share in the capital of any public Company, or Corporation, (*c*) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(*a*) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(*b*) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(*c*) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (*a*) of this section may pay the amount of his debt into Court, and such payment shall discharge him, as effectually as payment to the party entitled to receive the same.

In the case of the salary of pubic officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold, every month, such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the Court-house and shall be served on the officer so required.

Every such officer may, from time to time pay into Court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment debtor.

Attachment of moveable property in possession of judgment-debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the

custody of one of his subordinates, and shall be responsible for the due custody thereof :

Proviso.

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

Power to make rules for maintenance of attached live-stock.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment of negotiable instruments.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

Seizure of property in building.

271. No person executing any process under this Code directing or authorizing seizure of moveable property, shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dowelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be :

Seizure of property in zananas.

Provided that, if the room be in the actual occupancy of a woman, who, according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw ; and, after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Attachment of property deposited in Court or with Government officer.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Proviso.

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such Court.

Attachment of decree for money.

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court, under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree, and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made

Attachment of other decrees.

by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-holders to give information.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

Attachment of immoveable property.

274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift, or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

Order for withdrawal of attachment after satisfaction of decree.

275. If the amount decreed with costs, and all charges and expenses resulting from the attachment of any property, be paid into court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend or delivery of the shares to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Court may direct coin or currency-notes attached to be paid to party entitled.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

280. If, upon the said investigation the Court is satisfied that, for the reason stated, in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person, or party on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him or in occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to release of droperty attached.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Continuance of attachment subject to claim of incumbrancer.

283. The party against whom an order under section 280, 281, or 282 is passed, may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

284. Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Power to order property attached to be sold, and proceeds to be paid to person entitled.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

Property attached in execution of decrees of several Courts.

G.—Of Sale and Delivery of Property.

(a) General Rules..

286. Sales in execution of decrees shall de conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

Sales by whom conducted, and how made.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

Proclamation of sales by public auction.

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require

him to produce any document in his possession or power relating thereto.

Rules to be made by High Court.

The High Court shall as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time alter any rules so made. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

Indemnity of Judges, &c.

288. No Judge or other public officer shall be answerable for any error, misstatement, or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Mode of making proclamation.

289 The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the Court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

Time of sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house of the Judge ordering the sale.

Power to adjourn sale.

291. The Court may, in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may, in his discretion, adjourn the sale, recording his reason for such adjournment: Provided that when the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Stoppage of sale on tender of debt and costs, or on proof of payment.

Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Officers concerned in execution-sales not to bid for or buy property sold.

292. No officer having any duty to perform in connection with any sale under this chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in any property sold at such sale.

Defaulting purchaser answerable for loss by re-sale.

293. The deficiency of price (if any) which may happen on a resale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale, and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

Decree-holder not to bid for or buy property without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the

If decree-holder purchase amount of decree may be taken as payment.

purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree holder.

295. Whenever assets are realized by sale or otherwise in

Proceeds of execution-sale to be divided rateably among decree-holders.

execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided as follows:—

Proviso where property is sold subject to mortgage.

(*a*) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(*b*) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

(*c*) when immoveable property is sold in execution of a

Proviso.

decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-money due on the incumbrance;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(*b*) *Rules as to moveable Property.*

Rules as to negotiable instruments and shares in public Companies.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

Payment for other moveable property sold.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property, and for compensation in default of such recovery.

Delivery of moveable property actually seized.

299. When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of moveable property to which judgment-debtor entitled subject to lien.

300. When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of debts and of shares in public Companies.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchser, or receiving payment of any dividend or interest thereon, and the Manager, Secretary, or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

Transfer of negotiable instruments and shares.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing, is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect :—"*A. B*", by *C. D.*, Judge of the Court of (*or as the case may be*) ; in a suit by *E F* against *A. B.*"

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or divid-

end due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

Vesting order in case of other property.

303. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c) *Rules as to Immoveable Property.*

What Courts may order sales of land.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of small causes.

Postponement of sale of land to enable defendant to raise amount of decree.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper, to enable him to raise the amount.

Certificate to judgment-debtor.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease, or sale, provided that all moneys payable under such mortgage, leaser or sale, shall be paid into Court and not to the judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

306. On every sale of immoveable property under this

Deposit by purchaser of immoveable property.

chapter, the person declared to be the purchaser shall pay, immediately after such declaration a deposite of twenty-five percentum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposite, the property shall forthwith be put up again and sold.

Time for payment in full.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

Procedure in default of payment.

308. In default of paymentwithin the period mentioned in the last proceding section, the deposite after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property, or to any part of the sum for which it may subsequently be sold.

Notification on re-sale of immoveable property.

309. Every re-sale of immoveable property in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Co-sharer of share of undivided estate sold in execution to have preference in bidding.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

Application to set aside sale of land on ground of irregularity.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it ;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

Effect of objection being disallowed and

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

of its being allowed.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

Application to set aside sale on ground of judgment-debtor having no saleable interest.

213. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

Confirmation of sale.

314 No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

If sale setaside, price to be returned to purchaser.

315. When a sale of immoveable property is set aside under section 312 or 313, or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason, deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

Certificate to purchaser of immoveable property.

316. When a sale of immoveable preperty has become absolete in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate, and not before: provided that the decree under which the sale took place was still subsisting at that date.

Bar to suit against purchaser buying benami.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of immoveable property in occupancy of judgment-debtor.

318 When the property sold is in the occupancy of the judgment debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

319. When the property sold is in the occupancy of a tenant

Delivery of immoveable property in occupancy of tenant.

or other person entitled to occupy the same and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Power to prescribe rules for transferring to Collector execution of certain decrees.

320. The Local Government may, with the sanction of the Governor-General in Council, declare by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property shall be transferred to the Collector, and rescind or modify any such declaration.

Power to prescribe rules as to transmission, execution and re-transmission of decrees.

The Local Governmet may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

Power of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

(*a*) proceed as the Court would proceed under section 305; or

(*b*) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a permium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(*c*) sell the property ordered to be sold, or so much thereof as may be necessary.

322. When the execution of a decree, not being a decree

Procedure of Collector when execution of decree so transferred.

ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(*a*) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(*b*) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the adress of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of money-decrees to be ascertained, and immoveable property available for their satisfaction.

322B. Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such

decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

When Distrct Court may issue notices and hold enquiry.

322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry, and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

Effect of decision of Court as to dispute arising under section 232B or 322C.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

Scheme for liquidation of money-decrees.

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property ; or if it appears that the amount with interest, (if any) in accordance with the decree, and when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property ; or

(*b*) by mortgaging the whole or any part of such property ; or

(*c*) by selling part of such property ; or

(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale ; or

(*e*) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance , the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let, or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own

name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3), and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-Authority.

Recovery of balance, (if any) after letting or management.

324. If, on expiration of the letting or management under secton 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and if on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such property or part accordingly.

Collector to render accounts to civil Court.

324A. The Collector shall from time to time render to the Court which made the original order under section 304 an account of all monies which come to his hands, and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Application of balance.

Such balance shall be applied by the Court as follows :—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be

maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

Sales how to be conducted.

325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

(*a*) fix a reasonable reserved price for each lot;

(*b*) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fare price for the property, recording his reasons for such adjournment;

(*c*) buy in the property offered for sale, and re-sell the same public auction or private contract, as he thinks fit.

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector,

nor shall any Civil Court issue any process against such property or part in execution of a decree for money.

During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provisions has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

Provision where property is in several districts.

325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Goverment may, by general rule or special order, direct.

Powers of Collector to compel attendance of parties and witnesses and production of documents.

325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

When Court may authorize Collector to stay public sale of land.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

327. The Local Government may, from time to time, with the sanction of the Governor-General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value,

Local rules as to sales of land in execution of decrees for money.

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor-General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

H.— Of Resistance to Execution.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

Procedure in case of obstruction to execution of decree.

The Court shall fix a day for investigating the complaint; and shall summon the party against whom the complaint is made to answer the same.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor, or by some person at his instigation, the Court shall inquire into the matter of the complaint and pass such order as it thinks fit.

Procedure in case of obstruction by judgment-debtor or at his instigation.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other

Procedure when obstruction continues.

person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into possession of the property.

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

332. If any person other than the judgment-debtor is dispossed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute, and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, (if any), the order shall be final.

Transfer of property by judgment-debtor after institution of suit.

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

Resisting or obstructing purchaser in obtaining possession of immoveable property.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him, shall be applicable.

Obstruction by claimant other than judgment-debtor.

335. If the purchaser of any such property is resisted or obstructed by any person, other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the preset poss-

ession of the property; but subject to the result of such suit, (if any), the order shall be final.

I.—Of Arrest and Imprisonment

Place of judgment-debtors imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Provided as follows:—

(*a*) for the purpose of making an arrest under the section, no dwelling-house shall be entered after sun-set or before sun-rise, and no outer-door of a dwelling-housse shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who, according to the customs of the country, does not appear in public, the officer shall give notice to her that she is at liberty to withdraw · and, after allowing a reasonable time for her to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

Proviso.

(*b*) When the decree in execution of which a judgment-debtor is arrested is a decree for money, and judgment debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under chapter XX to be declared an insolvent, and that

will be discharged if he has not committed any act of bad faith regarding the subject of his application, and it he places all his property in possession of a receiver appointed by the Court.

If, after such publication, the judgment-debt r express his intention so to apply, and if he furnish sufficient security that he will appear when called upon and that he will, within one month, apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But if he fails so to apply, the Court may either direct the security to be realised, or commit him to jail in execution of the decree.

In the case of a surety such security may be realised in manner provided by section 253.

Warrant for arrest to direct judgment-debtor to be brought up.

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, (if any), to which he is liable, be sooner paid.

Scales of subsistence allowances.

338. The Local Government may from time to time prescribe scales, graduated according to rank, race, and nationality, or monthly allowances payable for the subsistance of judgment-debtors.

Judgment-debtor's subsistence-money.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistenc such monthly allowance as he may be entiled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed,

by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current months as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

Subsistence-money to be costs in suit.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

Relesae of judgment-debtor.

341. The judgment-debtor shall be discharged from jail,

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned, or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled:

Provided that, in the second, third, and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

Imprisonment not to exceed six months.

342. No person shall be imprisoned in execution of a decree for a longer period than six months;

When not to exceed six weeks.

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

Endorsement of warrant.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and, the manner in, which it was executed, and if the latest day specified in the warrant for the return thereof has been exceeded, the reasen of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability and shall record the result

CHAPTER XX.

OF INSOLVENT JUDGMENT-DEBTORS.

Power to apply for declaration of insolvency.

344 Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of application.

345. The application, when made by the judgment-debtor shall set forth—

(a) the fact of his arrest, or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the

order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody ;

(b) the amount, kind, and particulars of his property, and the value of any such property not consisting of money ;

(c) the place or places in which such property is to be found ;

(d) his willingness to put it at the disposal of the Court ;

(e) the amount and particulars of all pecuniary claims against him, and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall setforth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

Subscription and verification of application.

346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

Service of copy of application and notice.

347. The Court shall fix a day for hearing the application and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in court and served at the applicant's expence—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application :

where applicant is the decree-holder—on the [illegible]ent-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expence the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

Power to serve other creditors.

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

Powers of Court as to judgment-debtor under arrest.

349 Where the judgment-debtor is under arrest, the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

Procedure at hearing.

350 On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of receiver.

351. If the Court is satisfied—

(a) that the statements in the application are substantially true;

(b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if the thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

Creditors to prove their debts.

352. The creditors mentioned in the application, and the other person (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts, and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be decree in favour of each of the said creditors for their said respective debts.

Schedule to be framed.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Applications by unscheduled creditors.

353. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

Effect of order appointing Receiver.

354. Every order under section 351 shall be published in the local official Gazette, and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266) whether set forth in his application or not.

Receiver to give security and collect assets.

355. The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid;

Discharge of insolvent.

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Duty of Receiver.

356. The Receiver shall proceed under the direction of the Court—

(a) to convert the property into money:

(b) to pay thereout debts, fines, and penalties (if any) due by the insolvent to Government:

(c) to pay the said decree-holder's costs:

(d) to discharge according to their respective priorities, all debts secured by mortgage of the insolvent's property:

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference:

and such Receiver may retain as a remuneration for the performance of his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus (if any), to the insolvent or his legal representative :

His right to remuneration.

Delivery of surplus,

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver ; but, after he has sold the other property of the insolvent, the Court shall ascertain (*a*) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (*b*) the immoveable property of the insolvent remaining unsold, and (*c*) the incumbrances, (if any), existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid ; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable, and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (expect the particulars specified in the first proviso to section 266, and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

Effect of discharge

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

Declaration that insolvent is discharged from liability.

Procedure in case of dishonest applicant.

359. Whenever, at the hearing under section 350, it is proved that the applicant has

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred or removed any property or;

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with accoding to law,

Investment of other Courts with powers of District Court,

Transfer of cases,

360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district, and so invested, any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property, or any part thereof is situate outside British Burma.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE, INSOLVENCY OF PARTIES.

No abatement by party's death, if right to sue survive.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Illustrations.

(*a*) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree : the right to sue survives to C, and the suit does not abate.

(*b*) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(*c*) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(*d*) A, a member of a Hindu joint family under the Mirtakshara law, institutes a suit for partition of the family-property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

362. If there be more plantiffs or defendants than one and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs or defendants, if right to sue survive.

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

Procedure in case of death of one of several plaintiffs where right to sue survives to survivors and representative of deceased.

364. If, within the time limited by law, no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, and the legal representative (if any) of the deceased plaintiff shall be made a party, and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Procedure where no application made by representative of deceased plaintiff.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

Procedure in case of death of sole, or sole surviving, plaintiff.

366. If within the time limited by law no such application

Abatement where no application by representative of deceased plaintiff.

be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal reprsentative liable in respect of such property.

Procedure in case of dispute as to representative of deceased plaintiff.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Procedure in case of death of one of several defendants,

368. If there be more defendants than one, and any of them die before decree, and the right to sue does not survive against the surviving defendant or defendants alone,

or of sole or sole surviving defendant.

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend his suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant, and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

Suit not abated by marriage of female party.

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may, notwithstanding, be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband where the husband, is by law entitled to the subject-matter of the decree.

When plaintiff's bankruptcy or insolvency bars suit.

370. The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit, and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the

Procedure when assignee fails to continue suit or give security.

suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

371. When a suit abates or is dismissed under this chapter no fresh suit shall be brought on the same cause of action.

Application to set aside abatement or dismissal.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abetement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Procedure in case of assignment pending suit.

372. In other cases of assignment, creation, or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections (if any), be continued by or against the person to whom such interest has come, either in addition to, or in substitution for, the person from whom it has passed, as the case may require.

CHAPTER XXII.

OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

Power to allow plaintiff to withdraw with liberty to bring fresh suit.

373. If, at any time after the institution of the suit, the Court is satisfied, on the application of the plaintiff, (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part

of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation-law not affected by first suit.

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

Compromise of suits.

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise, or satisfaction.

CHAPTER XXIII.

Of Payment into Court.

Deposit by defendant of amount in satisfaction of claim.

376. The defendant in any suit to recover a debt or damages, may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

377. Notice in writing of the deposit shall be given through

Notice of deposit

the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

378. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

Procedure where plaintiff accepts deposit as satisfaction in part.

379 If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed, and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(*a*) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) B sues A under the circumstances mentioned in illustration (*a*). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court B accepts it in full

satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150, and sues A for that amount. On the plaint being filed, A pays Rs 100 into Court, and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

CHAPTER XXIV.

OF REQUIRING SECURITY FOR COSTS.

When security for costs may be required from plaintiff at any stage of suit.

380. If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Effect of failure to furnish security.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit, unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

Residence out of British India.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India, within the meaning of section 380.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to examine Witnesses.

Cases in which Court may issue commission to examine witness.

383. Any Court may, in any suit, issue a commission for the examination, on interrogatories or otherwise, of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are, from sickness or infirmity unable to attend it.

Order for commission.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

When witness resides within Court's jurisdiction.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Persons for whose examination commission may issue.

386. Any Court may, in any suit, issue a commission for the examination of—

(*a*) any person resident beyond the local limits of its jurisdiction;

(*b*) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(*c*) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commsision thinks fit to appoint.

The Court, on issuing any commission under this section, shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission to examine witness not within British India.

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

Court to examine witness pursuant to commission.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

Return of commission with depositions of witnesses.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

When depositions may be read in evidence.

390. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(*a*) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable, from sickness or infirmity, to attend to be personally examined, or exempted from personal appearance in Court, or

(*b*) the Court, in its discretion, dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions, shall apply to commissions issued by

(*a*) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for local Investigations.

Commission to make local investigations.

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court.

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Procedure of commissioner.

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report inwriting, signed with his name, to the Court.

Report and depositions to be evidence in suit.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit, and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Commissioner may be examined in person.

C.—Commissions to examine Accounts.

Commission to examine or adjust accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit, directing him to make such examination or adjustment.

Court to give Commissioner necessary instructions.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Court to receive commissioner's proceedings or direct further inquiry.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

D.—Commission to make Partition.

Commission to make partition of non-revenue-paying immoveable property.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Procedure of Commissioners.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commis-

sioners agree in their report) pass a decree in accordance therewith.

E.—General Provisions.

Expenses of commission to be paid into court.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be, within a time to be fixed by the Court, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners.

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*b*) call for and examine documents and other things relevant to the subject of inquiry;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendance, examination, and punishment of witnesses before Commissioner.

399. The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

Court to direct parties to appear before Commissioner.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Procedure ex parte.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

Suits may be brought "in forma pauperies."

401. Subject to the following rules, any suit may be brought by a pauper.

Explanation.—A person is a 'pauper' when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

What suits excepted.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language, or assault.

Application to be in writing. Contents of application.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

Presentation of application.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person unless he is exempted from appearing in Court under sec-

tion 640 or section 641, in which case the application may be presented by a duly authorized agent, who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Rejection of application.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

Examination of applicant.

406. If the application be in proper form and duly presented the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

Rejection of application.

407. If it appear to the Court—

(*a*) that the applicant is not a pauper, or

(*b*) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter or

(*c*) that his allegations do not show a right to sue in such Court, or

(*d*) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,

the Court shall reject the application.

Notice of day for receiving evidence of applicant's pauperism.

408. If the Court sees no reason to refuse the application, on any of the grounds stated in section 407, it shall fix a day (of which at least ten day's previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant

may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Procedure at hearing.

409. On the day so fixed, or soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

Procedure if application admitted.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under chapter V. except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

Costs when pauper succeeds.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

Recovery of court-fees.

Procedure when pauper fails.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made under section 32, co-plaintiff to the suit, to pay the court-fees which would have been

paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with punishment for a term which may extend to a month, or with both.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

Dispaupering.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper, or

(c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

Costs.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

Suits by or against Secretary of State in Council,

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

417. Persons being, *ex officio* or otherwise, authorized to act for Government in respect of any judicial proceeding, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code may be made or done on behalf of Government.

Persons authorized to act for Government.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

Plaints in suits by Secretary of State in Council.

419. The Government Pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such Court.

Agent for Government to receive process.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Service on public officer.

423. If the public officer, on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

Extension of time to enable officer to make reference to Government.

and the Court, upon such application, may extend the time for so long as appears to be requisites.

424. No suit shall be instituted against the said Secretary of State in Council or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such notice has been so delivered or left.

Notice previous to suing Secretary of State in Council or public officer.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

Arrests in such suits.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the Register.

Application where Government undertakes defence.

427. If such application is not made by the Government

Procedure where no such application made.

Defendant not liable to arrest before judgment.

Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Exemption of public officers from personal appearance.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

Procedure where decree against Government or public officer.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

When aliens may sue.

430. Alien enemies residing in British India with the permission of the Governor General in council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

When foreign State may sue

431. A foreign State may sue in the Courts of British India, provided that—

(*a*) it has been recognized by Her Majesty or the Governor General in Council, and

(*b*) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council.

Persons specially appointed by Government to prosecute or defend for princes or Chiefs.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts, and applications under this Code, may be made or done on behalf of such Prince or Chief.

Suits against sovereign Princes, &c.

433. Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of Government certified by the signature of one of its Secretaries (but not without such consent), be sued in any competent Court not subordinate to a District Court;

Such consent shall not be given unless—

(*a*) the Prince, Chief, ambassador, or envoy has instituted a suit in such Court against the person desiring to sue him; or

(*b*) the Prince, Chief, ambassador, or envoy, by himself or another, trades within the local limits of the jurisdiction of such Court; or

(*c*) the subject-matter of the suit is immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador, or envoy.

Sovereign Princes, &c., exempt from arrest.

When their property may be attached.

No such Prince, Chief, ambassador, or envoy shall be arrested under this Code and no decree shall be executed against the property of any such Prince, Chief, ambassador, or envoy unless with consent of Government certified as aforesaid.

Execution in British India of decrees of Courts of Native States.

434. The Governor General in Council may, from time to time, by notification in the *Gazzette of India*,

(*a*) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor General in Council, may be executed in British India, as if they had been made by the Courts of British India, and

(*b*) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

CHAPTER XXIX

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

Subscription and verification of plaint.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Service on Corporation or Company.

436. When the suit is against a Corporation, or against a Company authorised to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(*a*) by leaving it at the registered office (if any) of the Corporation or Company, or

(*b*) by sending it by post in a letter addressed to such officer or trustee at the office (or, if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(*c*) by giving it to any director, secretary, or other principal officer of the Corporation or Company;

and the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

Representation of beneficiaries in suits concerning property vested in trustees, &c.

437. In all suits concerning property vested in a trustee, executor, or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

Joinder of executors and administrators.

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of married executrix not join.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

Minor must sue by ext friend.

Costs.

440. Every suit by a minor shall be instituted in his name by an adult person, who, in such suit, shall be called the next friend of the minor, and may be ordered to pay any as if he were the plaintiff.

Applications to be made by next friend or guardian "ad litem."

441. Every application to the Court on behalf of a minor (other than an application under section 449) shall be made by his next friend, or his guardian for the suit.

Plaint filed without next friend to be taken off file.

Costs.

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections, (if any), may make such order in the matter as it thinks fit.

Guardian "ad litem" to be appointed by Court.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

Order obtained without next friend or guardian may be discharged.

444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reason-

Costs.

ably have known, the fact of such minority with costs to be paid by such pleader.

Who may be next friend.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

Removal of next friend.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Retirement of next friend.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Application for appointment of new next friend.

The application for the appointment of a new next friend shall be supported by affidavit shewing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Stay of proceedings on death or removal of next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Application for appointment of new next friend.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Course to be followed by minor plaintiff or applicant on coming of age.

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

Where he elects to proceed.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall, in such case, be corrected so as to read thenceforth thus:

"*A. B.*, late a minor, by *C. D.*, his next friend, but now of full age."

Where he elects to abandon.

Costs.

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

Making and proving applications under sections 451, 452.

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

When minor co-plaintiff coming of age desires to repudiate suit.

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Notice of the application shall be served on the next friend, as well as on the defendand; and it must be proved by affidavit that the late minor has attained his full age.

Costs.

The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

If the late minor be a necessary party to the suit, the Court may direct him to be made a defendant.

455. If any minor on attaining majority, can prove, to the satisfaction of the Court, that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

When suit unreasonable or improper.

Notice of the application shall be served on all the parties concerned: and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Petition for appointment of guardian "ad litem."

Where there is no other person fit and willng to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: Provided that he has no interest adverse to that of the minor.

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

Who may be guardian "ad litem."

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Guardian neglecting his duty may be removed.

Costs.

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Appointment in place of guardian dying "pendente lite."

Guardian "ad litem" of minor representative of deceased judgment-debtor.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Before decree, next friend or "guardian ad litem" not to receive money without leave of Court and giving security.

461. No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

Next friend or guardian "ad litem" not to compromise without leave of Court.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Compromise without leave voidable.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Application of sections 440 to 462 to persons of unsound mind.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858, or under any other law for the time being in force.

Wards of Court.

464. Nothing in sections 440 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards, or by the Civil Court under any local law.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing, and shall be signed by the officer or soldier in the presence of (*a*) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (*b*) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression 'commanding officer' means the officer in actual command for the time being of any regiment, corps, detachment, or depot to which the officer or soldier belongs.

Person so authorized may act personally or appoint pleader.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Service on person so authorized, or on his pleader, to be good service.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

468. When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

Service on officers and soldiers.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If, from any cause, the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service

469. If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station, or military bazar, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

Execution of warrant of arrest in cantonments, &c.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

CPAPTER. XXXIII.

INTERPLEADER.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

when interpleader-suit may be instituted.

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

Plaint in such suit.

471. In every suit of interpleader the plaint must, in addition to the other statements necessary for plaints, state—

(a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder ;
(b) the claims made by the defendants severally ; and
(c) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into Court.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Procedure at first hearing.

473. At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit ;
or, if it thinks that justice or convenience so require,
(b) retain all parties until the final disposal of the suit ; and, if it finds that the admissions of the parties or other evidence enable it,
(c) adjudicate the title to the thing claimed : or else it may
(d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claim.

When agents and tenants may institute interpleader-suits.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A and

claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Charge of plaintiff's costs.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Procedure where defendant is suing stake-holder.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stake-holder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Costs.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

Of Arrest and Attachment before Judgment.

A.—Arrest before Judgment.

When plaintiff may apply that security be taken.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(*a*) has absconded or left the jurisdiction of the Court; or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

Order to bring up defendant to show cause why he should not give security.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

that the defendant, with any such intent as aforesaid,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

If defendant fail to show cause, Court may order him to make deposit or give security.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until

execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to give security or find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree: Provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided that no person shall be detained in prison under this section after he has complied with such order.

Subsistence of defendants arrested.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

B.—Attachment before Judgment.

Application before judgment for security from defendant to satisfy decree, and, in default, for attachment of property.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(*a*) is about to dispose of the whole or any part of his property, or to remove the

same from the jurisdiction of the Court in which the suit is pending, or

(*b*) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

Contents of application.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

Court may call on defendant to furnish security or show cause.

484. If the Court, after examining the applicant, and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has, with such intent, quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also, in the order, direct the conditional attachment of the whole or any portion of the property specified in the application.

Attachment if cause not shown or security not furnished.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

Withdrawal of attachment.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

Mode of making attachment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner herein before provided for the investigation of claims to property attached in execution of a decree for money.

Investigation of claims to property attached before judgment.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Removal of attachment when security furnished or suit dismissed.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

Property attached under chapter not to be re-attached in execution of decree.

C.—Compensation for improper Arrests or Attachment.

491. If, in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

Compensation for obtaining arrest or attachment on insufficient grounds.

or if the suit of the plaintiff fails, and it appear to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury, caused to him by the arrest or attachment:

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

Cases in which temporary injunction may be granted.

492. If, in any suit, it is proved by affidavit or otherwise—

(*a*) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(*b*) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may, by order, grant a temporary injunction to restrain such act, or give such other order, for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

Injunction to restrain repetition or continuance of breach.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach

of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may, by order, grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance, if any, to the defendant.

Before granting injunction, Court to direct notice to opposite party.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Injunction to Corporation binding on its members and officers.

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Order for injunction may be discharged, varied, or set aside.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Compensation to defendant for issue of injunction on insufficient grounds.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunctoin, the suit is dismissed, or judgment is given against the plaintiff by

default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its degree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction :

Proviso.

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

Power to order interim sale of perishable articles.

498. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner, and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

Power to make order for detention, &c., of subject-matter and to authorize entry, taking of samples and experiments.

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(*a*) make an order for the detention, preservation, or inspection of any property being the subject of such suit ;

(*b*) for all or any of the purposes aforesaid, authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(*c*) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

500. An application by the plaintiff for an order under sec-

Applications for such orders to be after notice.

tion 498 or section 499 may be made after notice in writing to the defendant at any time after survice of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

When party may be put in immediate possession of land the subject of suit.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposit of money, &c., in Court.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

CHAPTER XXXVI.

Appointment of Receivers.

Power of Court to appoint Receivers.

503. Whenever it appears to the Court to be necessary for the realization, preservation, or better custody or managment of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may, by order—

(*a*) appoint a Receiver of such property,

and, if need be,

(*b*) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(*c*) commit the same to the custody or management of such Receiver; and

(*d*) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation, and improvement of the property, the collection of the rents and profits thereeof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Receivers liabilities.

Every Receiver so appointed shall—

(*e*) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(*f*) pass his accounts at such periods and in such form as the Court directs;

(*g*) pay the balance due from him thereon as the Court directs, and

(*h*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

When Collector may be appointed Receiver.

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver of such property.

505. The powers conferred by this chapter shall be exer-

Courts empowered under this chapter.

cised only by High Courts and District Courts: Provided that, whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

Parties to suit may apply for order of reference.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing, and shall state the particular matter sought to be referred.

Nomination of arbitrator.

507. The arbitator shall be nominated by the parties in such manner as may be agreed upon between them.

When Court to nominate arbitrator.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

Order of reference.

508. The Court shall, by order, refer to the arbitator the matter in difference which he is required to determine, and shall fix such time as it

thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

When reference is to two or more, order to provide for difference of opinion.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

(*a*) by the appointment of an umpire, or

(*b*) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or

(*c*) by empowering the arbitrators to appoint an umpire, or

(*d*) otherwise, as may be agreed between the parties; or, if they cannot agreed, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

Death, incapacity, &c., of arbitrators or umpire.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may, in its discretion, either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitartion, and in such case shall proceed with the suit.

Appointment of umpire by Court.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire, and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire, and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Powers of arbitrator or umpire appointed under sections 509, 510, 511.

512. Every arbitrator or umpire appointed under section 509, 510 or 511 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Punishment for default, &c.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award.

514. If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Supersession of arbitration.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed, he may enter on the reference in the place of the arbitrators.

(*a*) if they have allowed the appointed time to expire without making an award, or

(*b*) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

Award to be signed and filed.

516. When an award in a suit has been made, the persons who made it shall sign it, and cause it to be filed in Court, together with any depositions and documents which have been taken

and proved before them; and notice of the filing shall be given to the parties.

Arbitrators or umpire may state special case.

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to, and form part of, the award.

Court may, on application, modify or correct award in certain cases.

518. The Court may, by order, modify or correct an award,

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part, and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

Order as to costs of arbitration.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs, and the award contain no sufficient provision concerning them.

When award or matter referred to arbitration may be remitted.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on

the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

Grounds for setting aside award.

(*a*) corruption or misconduct of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

Judgment to be according to award.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Decree to follow.

Upon the judgment so given a decree shall follow, ~~and shall~~ be enforced in manner provided in this Code for the executin of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Agreement to refer to arbitration may be filed in Court.

523. When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in Court.

The application shall be in writing, and shall be numbered and

Application to be numbered and registered.

registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Notice to show cause against filing.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein, and the parties cannot agree as to the nomination.

Provisions of chapter applicable to proceedings under order of reference.

524 The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Filing award in matter referred to arbitration without intervention of Court.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in Court.

Application to be numbered and registered.

The application shall be in writing, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Notice to parties to arbitration.

526. If no ground, such as is mentioned or referred to in section 520 or 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

Filing and enforcement of such award.

CHAPTER XXXVIII.

OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writting stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

Power to state case for Court's opinion.

(*a*) a sum of money fixed by the parties, or to be determined by the Court, shall be paid by one of the parties, to the other of them; or

(*b*) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

When value of subject-matter must be stated.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

Agreement to be filed and numbered as suit.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

Parties to be subject to Court's jurisdiction.

531. The case shall be set down for hearing as a suit instituted under chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

Hearing and disposal of case.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bona fide* interest in the question stated ~~therein~~, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

CPAPTER. XXXIX.

OF SUMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills of exchange, hundis, or promissory notes, may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form pre-

Institution of summary suits upon bills of exchange, &c.

scribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit, unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Payment into court of sum mentioned in summons.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundi, or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

Defendant showing defence on merits to have leave to appear.

533 The Court shall, upon application by the defendant, give leave to appear and to defend the suit upon the defendant paying into Court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534 After decree, the Court may, under special circum-

Power to set aside decree.

stances, set aside the decree, and, if necessary, stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, &c., to be deposited with officer of Court.

535. In any proceeding under this chapter the Court may order the bill, hundi, or note on which the suit is founded, to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or note.

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

Procedure in suits under chapter.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under chapter V.

Application of chapter.

538. Sections 532 to 537 (both inclusive) apply only to—

(a) the High Courts of Judicature at Fort William, Madras, and Bombay;

(b) the Court of the Recorder of Rangoon;

(c) the Courts of small causes in Calcutta, Madras, and Bombay;

(d) the Court of the Judge of Karachi; and

(e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may from time to time alter or cancel any such notification.

CHAPTER XL.

OF SUITS RELATING TO PUBLIC CHARITIES.

When suits relating to public charities may be brought.

539. In case of any alleged breach of any express or constructive trust created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General acting *ex officio*, or two or more persons having a direct interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

(*a*) appointing new trustees under the trust;

(*b*) vesting any property in the trustees under the trust;

(*c*) declaring the proportions in which its objects are entitled;

(*d*) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged;

(*e*) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X of 1840, section 2, is hereby repealed.

PART VI.

OF APPEALS

CHAPTER. XLI.

OF APPEALS FROM ORIGINAL DECREES.

Appeal to lie from all original decrees, except when expressly prohibited.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

Form of appeal.

What to accompany memorandum.

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

Appellant confined to grounds set out.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

543. If the memorandum of appeal be not drawn up in

Rejection or amendment of memorandum.

the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, of such officer as he appoints in this behalf, shall attest the amendment by his signature.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

Of staying and executing Decrees under Appeal.

Execution of decree not stayed solely by reason of appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may for sufficient cause order the execution to be stayed:

Stay of execution of appealable decree before time for appealing has expired.

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed:

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

546. If any order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

Security in case of order for execution of decree appealed against.

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

No such security to be required from Government or public officers.

Of Procedure in Appeal from Decrees.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal.

Such book shall be called the Register of Appeals.

Register of Appeals.

549. The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Appellate Court may require appellant to give security for costs.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immovable property within British India independent of the property (if any) to which the appeal relates.

When appellant resides out of British India.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

Appellate Court to give notice to Court whose decree appealed against.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made, and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Copies of exhibits in Court whose decree appealed against.

551. The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or

Power to confirm decision of lower Court without sending it notice.

his pleader; but in such case the confirmation shall be notified to the same Court.

Day for hearing appeal.

552. The Appellate Court, unless where it confirms, under section 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Publication and service of notice of day for hearing appeal.

553. Notice of the day so fixed shall be stuck up in the Appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondence or his pleader under the rules above referred to.

Contents of notice

554. The notice to the respondence shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on Hearing.

Right to begin.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellate shall be entitled to reply.

556. If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

Dismiss of appeal for appellant's default.

If the appellant attends and the respondence does not attend, the appeal shall be heard *ex parte* in his absence.

Hearing appeal "ex parte."

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed;

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

Proviso.

558. If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Re-admission of appeal dismissed for default.

559. If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

Power to adjourn hearing, and direct persons appearing interested to be made respondents.

Re-hearing on application of respondent against whom "ex parte" decree made.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Upon hearing respondent may object to decree as if he had preferred separate appeal.

561. Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Form of notice, and provisions applicable thereto.

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Remand of case by Appellate Court.

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reserved in appeal, the Appellate Court may, if it thinks fit, by order remand the case together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

563. When a case is remanded with directions to take any

When further evidence barred.

evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

Limit to remand.

564. The appellate Court shall not remand a case for a second decision, except as provided in section 562.

When evidence on record sufficient, appellate Court shall determine case finally.

565. When the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment, the appellate Court shall, after resettling the issues if necessary, finally determine the case notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the appellate Court proceeds.

When appellate Court may frame issues and refer them for trial to Court whose decree appealed against.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate Court essential to to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,

and such Court shall proceed to try such issues, and shall return to the appellate Court its finding thereon together with the evidence.

Finding and evidence to be put on record.

Objections to finding.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

Determination of appeal.

Production of additional evidence in Appellate Court.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuse to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to de received, or witness to be examined.

Whenever additional evidence is admitted by an appellate Court, the Court shall record on its proceedings the reason for such admission.

Mode of taking additional evidence.

569. Whenever additional evidence is allowed to be received, the appellate Court may either take such evidence, or direct the Court against whose decree appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the appellate Court.

Points to be defined and recorded.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal.

Judgment when and where pronounced.

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Language of judgment.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Translation of judgment.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Contents of judgment.

574. The judgment of the Appellate Court shall state

(a) the points for determination;
(b) the decision thereupon;
(c) the reasons for the decision; and
(d) when the decree appealed against is reserved or varied, the relief to which the appellant is entitled,

Date and signature.

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Decision when appeal heard by two or more Judges.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reserving the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the

Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reserving the decree appealed against, such decree shall be affirmed

The High Court may from time to time make rules consistent with this Code to regulate references under this section.

Dissent to be recorded.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same

What judgment may direct.

577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

578. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

Of the Decree in Appeal.

Date and contents of decree.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportion

such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

Copies of judgment and decree to be furnished to parties.

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

Certified copy of decree to be sent to Court whose decree appealed against.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Appellate Court to have same powers as Courts of original jurisdiction.

582 The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and, in chapter XXI, so far as may be, the words "plaintiff," "defendant" and "suit" shall be held to include an appellant, a respondent and an appeal, respectively, in proceedings arising out of the death, marriage or insolvency of parties to an appeal

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable.

Execution of decree of Appellate Court.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed

the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

CHAPTER XLII.

OF APPEALS FROM APPELLATE DECREES.

Second appeals to High Court.

584. Unless when otherwise provided by this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Grounds of second appeal.

(*a*) the decision being contrary to some specified law or usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

Second appeal on no other grounds.

585. No second appeal shall lie except on the grounds mentioned in section 584.

No second appeal in certain suits.

586. No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

Provisions as to second appeal.

587. The provisions contained in chapter XLI shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

CHAPTER XLIII.

OF APPEALS FROM ORDERS.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders:—

(1) orders under section 20, staying proceedings in a suit;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;

(3) orders under section 36 or section 66, directing that a party shall appear in person;

(4) orders under section 44, adding a cause of action;

(5) orders under section 47, excluding a cause of action;

(6) orders returning plaints for amendment or to be presented to the proper Court;

(7) orders under section 111, setting-off, or refusing to set-off, one debt against another.

(8) orders rejecting applications under sections 103 (in cases open to appeal) for an order to set aside the dismissal of a suit,

(9) orders rejecting applications under sections 108, or an order to set aside a decree *ex parte;*

(10) orders under sections 113, 120 and 177;

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145, directing any thing to be impounded;

(13) orders under section 162, for the attachment and sale of movable property;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property,

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;

(16) orders under section 294, the first paragraph of section 312 or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immovable property,

(17) orders in insolvency-matters, under section 351, section 352, section 353 or section 357;

(18) orders under section 366, paragraph two, section 367 or section 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections, under section 372;

(22) orders under section 454, section 455 or section 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader-suits under section 473, clause (*a*), (*b*) or (*d*), section 475 or section 476;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

What Courts to hear appeals.

589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

Procedure in appeals from orders.

590. The procedure prescribed in chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

591. Except as provided in this chapter, no appeal shall lie

No other appeal from orders; but error therein may be set forth in memorandum of appeal against decree.

from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

CHAPTER XLIV.

OF PAUPER APPEALS.

Who may appeal as pauper.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable:

Procedure on application for dimission of appeal.

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Inquiry into pauperism.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Proviso.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

CHAPTER XLV.

OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this chapter, unless there be something repugnant

in the subject or context, the expression 'decree' includes also judgment and order.

Decree defined.

595. Subject to such rules as may, from time to time, be made by Her Majesty in council regarding appeals from the Courts of British India, and to the provisions herein after contained,

When appeals lie to Queen in Council.

an appeal shall lie to Her Majesty in council—

(a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in council.

Value of subject-matter.

596. In each of the cases mentioned in clauses (a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value, and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

Bar of certain appeals.

597. Notwithstanding anything contained in section 596,

no appeal shall lie to Her Majesty in council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Divison Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in council from any decree which, under section 986, is final.

Application to Court whose decree complained of.

598. Whoever desires to appeal under this chapter to Her Majesty in council must apply by petition to the Court whose decree is complained of.

Time within which application must be made.

599. Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

Certificate as to value of fitness.

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount of value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

Effect of refusal of certificate.

601. If such certificate be refused, the petition shall be dismissed.

Provided that if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

Security and deposit required on grant of certificate.

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

(a) give security for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in council in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of account, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included and

(4) such other documents as the High Court may direct to be excluded:

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

(*a*) declare the appeal admitted, and

(*b*) give notice thereof to the respondent, and shall then

(*c*) transmit to her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(*d*) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation of acceptance of security.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to order further security or payment.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

606. If the appellant fail to comply with such order, the proceedings shall be stayed,

Effect of failure to comply with order.

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council,

balance

the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

Powers of Court pending appeal.

But the Court may, if it think fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(*a*) impound any movable property in dispute or any part thereof, or

(*b*) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(*c*) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(*d*) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

609. If at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

Increase of security found inadequate.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to enforce orders of Queen in Council.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompained by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

Appeal against order relating to execution

611. The order made by Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same

manner and subject to the same rules as the orders of such Court relating to enforcement or execution of its own decrees.

Power to make rules.

612. The High Court may, from time to time, make rules consistent with this Act to regulate (*a*) the service of notices under section 600;

(*b*) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court;

[illegible]e amount and nature of the security required under sect[illegible] 602, 605 and 609;

[illegible]e testing of such security;

[illegible] the estimate of the cost of transcribing the record,

[illegible]) the preparation, examination and certifying of such transcript;

[illegible]e revision and authentication of translations;

[illegible]e preparation of indices to transcripts of records, and of lists of the papers not included therein;

(*i*) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council;

and all other matters connected with the enforcement of this chapter.

Publication of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Legalization of existing rules.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

Recorder of Rangoon.

614. In sections 595 and 612, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his o[illegible] Court.

Construction of Bengal Regulation III of 1828, section 4, clause 5.

615. The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Saving of Her Majesty's pleasure'

616. Nothing herein contained shall be understood

(*a*) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

and of rules for conduct of business before Judicial Committee.

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, nor to appeals from orders and decrees of Prize Courts.

PART VII.

CHAPTER XLVI.

Of Reference to and Revision by The High Court.

Reference of question to High Court.

617. If before or on the hearing of a suit or appeal in which the decree is final, or if in the execution of any such decree any question of law, or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and

the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

Court may pass decree contingent upon opinion of High Court.

but no execution shall be issued, property sold, or person imprisoned, in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment under the signature of the Registrar, to the Court by which the reference was made, and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Judgment of High Court to be transmitted, and case disposed of accordingly.

620. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

Costs of reference to High Court.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to alter &c., decrees of Court making reference.

622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the cases was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise

Power to call for records of cases not appealable to High Court.

of its jurisdicoon illegallly or with material irregularity, and may pass such order in the case as the High Court thinks fit.

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

Application for review of judgment.

623. Any person considering himself aggrieved

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom applications for review may be made.

624 Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face the decree, no application for a review of judgment, other than that of a

High Court, shall be made to any judge other than the judge who delivered it.

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

Form of applications for review.

626. If it appear to the Court that there is not sufficient ground for a review, it shall reject the application.

Application when rejected.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the judge shall record with his own hand his reasons for such opinion:

Application when granted.

Proviso.

Provided that—

(*a*) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for; and

(*b*) no such application shall be granted on the ground of discovery of new matter, or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed, without strict proof of such allegation.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented and is not or are not precluded by absence or other cause, for period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application for review in Court consisting of two or more Judges.

628. If the application for a review be heard by more than

Application when rejected.

one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority the decision shall be according to the opinion of the majority.

Order of rejection final. Objections to admission.

629. An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to on the ground that it was

(a) in contravention of the provisions of section 624,

(b) in contravention of the provisions of section 626, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

Registry of application granted, and order for re-hearing

630. When an application for review is granted, a note there of shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

Chapter to apply only to certain High Courts.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twentyfifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Application of Code to High Courts.

632. Except as provided in this chapter the provisions of this Code apply to such High Courts.

High Court to record judgments according to its own rules.

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs.

Power to order execution of decree before ascertainment of costs, and

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

execution for cost subsequently.

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Unauthorized persons not to address Court.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction or to examine witnesses, except when the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to enterfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

636. Notices to produce documents, summonses to wit-

Who may serve process of High Courts.

nesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

Non-judical acts may be done by Registrar.

637. Any non-judical or quasi-judical act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may from time to time by rule declare what shall be deemed to be non-judical and quasi-judicial acts within the meaning of this section.

Sections not applying to High Court in original civil jurisdiction.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extradorinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (*a*) and (*b*), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum ;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to affect High Court in exercise of insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

Power to frame froms.

639. The High Court may from time to time frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

Exemption of certain women from personal appearance.

640. Women who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

Local Government may exempt certain persons from personal appearance.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

Lists of names of persons exempted to be kept in Courts.

The names and residences of the persons so exempted shall from time to time be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

Costs of commission rendered necessary by claiming privilege.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Persons exempt from arrest under civil process.

642. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

And, except as provided in sections 256 and 643, where any

matter is pending before a tribunal having jurisdiction therein or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents, and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

643. When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476, or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

Procedure in case of certain offences.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Use of forms in fourth schedule.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until

Language of subordinate Courts.

the Local Government otherwise orders;

but it shall be lawful for the Local Government from time to time to declare what language shall be the language of every such Court.

Assessors in causes of salvage, &c.

645A. In any admiralty or Vice-admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction may, if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

Power of Registrars of Small Cause Courts to state cases.

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis,* to the stating of a case by the Registrar.

Miscellaneous proceedings.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

Admission of affidavits as evidence.

The High Court may from time to time make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

648. Where any Court desires that any person shall be ar-

Procedure when person to be arrested or property to be attached is outside district.

rested or that any property shall be attached under any provisions of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him

Rules applicable to all civil process for arrest sale or payment.

619. The rules contained in chapter XIX shall apply to the execution of any judicial process for the arrest of a person, or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression 'Court which passed a decree,' or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was prefered, and where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted

at the time of making application for execution of the decree, would have jurisdiction to try such suit.

650. The provisions of chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Application of rules as to witnesses.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts of British India and served as if they had been issued by such Courts : Provided that the Courts issuing such summonses have been established by the authority of the Governor-General in Council, or that the Governor-General in Council has, by notification in the *Gazette of India*, declared that provisions of this section to apply to such Courts.

Service of foreign summonses.

The Governor-General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

651. Whoever offers any resistance or illegal obstruction to the lawful apprehension of himself under this Code, under the warrant of any Civil or Revenue Court, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for resisting apprehension or escaping from custody under Code or civil process.

652. The High Court may from time to time make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power to make subsidiary rules of procedure.

SCHEDULES

TO THE CODE OF CIVIL PROCEDURE.

THE FIRST SCHEDULE.

(*See section* 3.)

ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X of 1877...	The Code of Civil Procedure.	So much as has not been repealed.
XII of 1879...	Amending Act X of 1877, &c.	Sections one to one hundred and three (both inclusive).
VII of 1880...	Merchant Shipping.	Section eighty-five.

THE SECOND SCHEDULE.

(*See section* 5.)

" Chapters and Sections of this Code extending to Provincial Courts of Small Causes."

Preliminary : Sections 1, 2, 3 and 5.

Chapter I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

Chapter II.—Of the Place of suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

Chapter III.—Of Parties and their Appearances, Applications and Acts.

Chapter IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

Chapter V.—Of the Institution of Suits.

Chapter VI.—Of the Issue and Service of Summons, except section 77.

Chapter VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

Chapter VIII.—Section 111, Set-off.

Chapter IX.—Of the Examination of the parties by the Court, except section 119.

Chapter X.—Of Discovery and the Admission, &c., of Documents.

Chapter XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

Chapter XIII.—Of Adjournments.

Chapter XIV.—Of the summoning and Attendance of Witnesses.

Chapter XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).

THE SECOND SCHEDULE—*continued.*

"Chapters and Sections of this Code extending to Muffasil Courts of Small Causes—*continued.*

Chapter XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.

Chapter XVIII.—Sections 220, and 221 and 222, Of costs.

Chapter XIX.—Of the Execution of decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to inmovable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for movable property), 275 to 280 (both inclusive), 283, 284 (so far as relates to movable property). 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to resales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to movable property), 336 to 343 (both inclusive).

Chapter XX.—Section 360, Power to invest certain Courts with insolvecy-jurisdiction.

Chapter XXI.—Of the Death, Marriage and Insolvency of Parties.

Chapter XXII.—Of the withdrawal and Adjustment of Suits.

Chapter XXIII.—Of Payment into Court.

Chapter XXIV.—Of requiring Security for Costs.

Chapter XXV.—Of Commissions.

Chapter XXVI.—Suits by Paupers.

Chapter XXVII.—Suits by and against Government or Government Servants.

THE SECOND SCHEDULE—*Concluded.*

Chapters and Sections of this Code extending to Muffusil Courts of Small Causes—Concluded.

Chapter XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.

Chapter XXIX.—Suits by and against Corporations and Companies.

Chapter XXX.—Suits by and against Trustees, Executors and Administrators.

Chapter XXXI.—Suits by and against Minors and Persons of unsound Mind.

Chapter XXXII.—Suits by and against Military Men.

Chapter XXXIII.—Interpleader.

Chapter XXXIV.—Of Arrest and attachment before Judgment, except as regards immovable property.

Chapter XXXVI.—Appointment of Receivers.

Chapter XXXVII.—Reference to Arbitration, section 506 to 526 (both inclusive).

Chapter XXXVIII.—Of Proceedings on Agreement of Parties.

Chapter XLVI.—Reference to and Revision by High Court.

Chapter XLVII.—Of Review of Judgment.

Chapter XLIX.—Miscellaneous, section 640 to 647 (both inclusive), section 649 to 652 (both inclusive).

THE THIRD SCHEDULE.

(*See section* 7).

Bombay Enactments.

Bombay Regulation XXIX, 1827.
,, ,, VII, 1830.
,, ,, I, 1831
,, ,, XVI, 1831.
Act XIX of 1835.
,, XIII of 1842.

THE FOURTH SCHEDULE.

(*See Section* 644.)

FORMS OF PLEADINGS AND DECREES.

A.—PART I. PLAINTS.

No. 1.

FOR MONEY LENT.

IN THE COURT OF AT

Civil Suit, No.

A. B. of
against
C. D. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he lent the defendant rupees repayable on demand (*or* on the day of).

2. That the defendant has not paid the same, except rupees paid on the day of 18 .

[*If the plaintiff claims exemption from any law of limitation say* :—

3. The plaintiff was a minor (*or* insane) from the day of till the day of).

4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

(NOTE.—The object of stating when the debt is to be repid is merely to fix a date for interest. If therefore interest is not claimead, the statement may be omitted.)

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(*Title.*)

A B. and *G. H.*, the above-named plaintiffs, state as follows :—

1 That on the day of 18 , at , the defendant received rupees (*or* a cheque on the Bank for Rs.) from one *E. F.* for the use of the plaintiffs.

THE FOURTH SCHEDULE—*continued.*

2. That the defendant has not paid (*or* delivered) the same accordingly.

The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he and *E. F.*, since deceased, delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or as the case may be*] for sale upon commission.

2. That on the day of 18 ; [*or*, on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandise for rupees.

3. That the commission and expenses of the defendant thereon, amount to rupees.

4. That on the day of 8 , the plaintiff demanded from the defendant the proceeds of the said merchandise.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. That the plaintiff procured the said bars to be assayed by one *E. F.*, who was paid by the defendant for such assay and that the said *E. F.* declared each of the said bar to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Rs. annas therefor.

THE FOURTH SCHEDULE—*continued.*

3. That each of the said bars did contain only 1,200 tolas of fine silver.

4. That the defendant has not repaid the sum so overpaid.

("Demand of judgment.")

(NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.)

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(*Title.*)

"A. B.," the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , at the request (*or* by the authority) of the defendant, the plaintiff paid to one "E. F." rupees.

2. That, in consideration thereof, the defendant promised (*or* became bound) to pay the same to the plaintiff on demand (*or as the case may be.*)

3. That (on the day of 18 , the plaintiff demanded payment of the same from the defendant, but) he has not paid the same.

("Demand of judgment")

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(*Title.*)

"A. B.," the above-named plaintiff, states as follows:—

1. That on the day of , 18 , at , "E. F." of , deceased, sold and delivered to the defendant (one hundred barrels of flour, *or*, the goods mentioned in the schedule hereto annexed, *or*, sundry goods.)

2. That the defendant promised to pay rupees for the said goods on delivery (*or* on the day of *some day before the plaint was filed*).

3. That he has not paid the same.

THE FOURTH SCHEDULE—*continued.*

4. That the said "E. F." in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the day of 187 the said "E F." died.

6. That on the day of probate of the said will was granted to the plaintiff by the Court of

7. The plaintiff as executor as aforesaid (*Demand of judgment*).

(NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.)

No. 7.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(*Title.*)

"A. B.," the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff sold and delivered to the defendant (sundry articles of house-furniture) but no express agreement was made as to the price.

2. That the same were reasonably worth rupees.

3. That the defendant has not paid the same.

("Demand of judgment")

(NOTE.—The law implies a promise to pay so much as the goods are reasonable worth.)

No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title)

"A. B.," the above-named plaintiff, states as follows :—

1. That on the day of 18 , at plaintiff sold to the defendant (one hundred barrels of flour) and, at the request of the defendant, delivered the same to one "E. F."

2. That the defendant promised to pay to the plaintiff rupees therefor.

3. That he has not paid the same.

(*Demand of judgment.*)

THE FOURTH SCHEDULE—*continued.*

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at plaintiff furnished to (*Mary Jones*) the wife of (*James Jones*) deceased, at her request, sundry articles of (*food and clothing*) but no express agreement was made as to the price.

2. That the same were necessary for her.

3. That the same were reasonably worth rupees.

4. That the said "James Jones" refused to pay the same.

5. That the defendant is the executor of the last will of the said "James Jones"

(*Demnad of judgment.*)

No. 10.

FOR GOODS SOLD AT A FIXED PRICE

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the plaintiff sold to E. F. of , deceased (*all the crops then growing on his farm in*)

2. That the said E. F. promised to pay the plaintiff rupees for the same.

3. That he did not pay the same.

4. That the defendant is administrator of the estate of the said E. F.

(*Title.*)

No. 11

FOR GOODS SOLD AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , E. F of

THE FOURTH SCHEDULE—*continued.*

sold to the defendant (*all the fruit growing in his orchard in*), but no express agreement was made as to the price.

2. That the same was reasonably worth rupees.

3. That the defendant has not paid the same.

4. That on the day of the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate with the usual powers for the management thereof.

5. The plaintiff as committee as aforesaid (*Demand of judgment*)

(Note.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following :—)

4. That on the day of the Civil Court of duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs and appointed the plaintiff Manager of his estate.

5. The plaintiff as Manager as aforesaid (*Demand of judgment.*)

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

A. B. the above-named plaintiff, states as follows :—

1. That on the day of 18 , at *E. F.* of agreed with the plaintiff that the plaintiff should make for him (*six tables and fifty chairs*), and that the said E. F., should pay for the same upon delivery thereof rupees.

2. That the plaintiff made the said goods, and on the day of 18 offered to deliver the same to the said E. F. and has ever since been ready and willing so to do.

3 That the said *E. F.* has not accepted the said goods or paid for the same.

4 That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said E F. to be a lunatic and appointed the defendant committee of his estate.

THE FOURTH SCHEDULE—*continued*

5 The plaintiff prays judgment for rupees with interest from the day of , at the rate of per cent per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

No. 13.

For Deficiency upon a Re-sale (goods sold at auction).

(*Title.*)

A. B, the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff put up at auction sundry (*articles of merchandise*), subject to the condition that all goods not paid for and removed by the purchaser thereof within (*ten days*) after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased (*one crate of crokcery*) at the said auction at the price of rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for (*ten days*) thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within (*ten days*) after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said (*crate of crockery*), on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

(*Demand of judgment.*)

(Note to § 1. Unless the seller agreed to deliver, the purchaser must fetch the goods, see Act IX of 1872, sec. 93.)

THE FOURTH SCHEDULE—*continued.*

No 14.

For the purchase-Money of Lands conveyed.

(*Title.*)

A B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the plaintiff sold [and conveyed] to the defendant [the house and compound No. , in the city of *or*, a farm known as , in *or*, a piece of land lying, *&c.*]

2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, *or* farm, *or* land].

3. That he has not paid the same.

(Demand of judgment.)

(Note.—Where there has been no actual conveyance, say, in sec. 1, "sold to the defendant the house, &c., and placed him in possession of the same.)

No. 15.

For the Purchase-Money of Immovable Property contracted to be sold, but not conveyed.

(Title.)

A. B. the above-named plaintiff, states as follows:

1 That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff (the house No. , in the town of , *or* one hundred bighas of land in , bounded by the East Indian railroad, and by other lands of the plaintiff) for rupees.

2. That on the day of 18 , at , the plaintiff tendered (*or*, was ready and willing, and offered to execute) a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

(" Demand of judgment.")

THE FOURTH SCHEDULE—*continued*.

No. 16.

FOR SERVICES AT A FIXED PRICE.

(*Title.*)

A. B. the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant (hired plaintiff as a clerk, at the salary of rupees per year).

2. That from the (said day) until the day of 18 , the plaintiff served the defendant as his (clerk).

3. That the defendant has not paid the said salary.

(*Demand of judgment.*)

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(*Title.*)

A B., the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , at , plaintiff (executed sundry drawings, designs and diagrams) for the defendant, at his request: but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth rupees.

3. That the defendant has not paid the same.

("Demand of judgment.")

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff (furnished the paper for and printed one thousand copies of a book called) for the defendant, at his request (and delivered the same to him).

2. That the defendant, promised to pay rupees therefor.

3. That he has not paid the same.

("Demand of judgment.")

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THE FOURTH SCHEDULE—*continued.*

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

"A. B." the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff built a house (unknown as No. , in), and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.

2. Tha the said work and materials were reasonably worth rupees.

3. That the defendant has not paid the same.

("Demand of judgment.")

No. 20.

FOR RENT RESERVED IN A LEASE.

(Title.)

"A. B.," the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

(Or state the substance of the contract.)

2. That the defendant has not paid the rent of the (month) ending on the day of 18 , amounting to rupees.

("Demand of judgment.")

Another form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringee, for seven years to hold from the day of 18 , at rupees a year, payable quarterly.

2. That of such rent quarters are due and unpaid.

("Demand of judgment.")

THE FOURTH SCHEDULE—*continued.*

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

"A. B.," the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant hired from the plaintiff (the house No. , street), at the rent of rupees, payable on the first day of

2. That the defendant occupied the said premises from the day of 18 , to the day of 18 .

3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

("Demand of judgment.")

No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of *X. Y.*, deceased states as follows :—

1. That the defendant occupied the (house No. , street), by permission of the said X. Y , from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. That the defendant has not paid the same.

4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

FOR BOARD AND LODGING.

(Title)

("A. B.," the above-named plaintiff, states as follows :—

1 That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house (No. , street), by permission of the plaintiff

THE FOURTH SCHEDULE—*continued.*

and was furnished by the plaintiff at his request, with meat, drink, attendance and other necessaries.

2. That, in consideration thereof, the defendant promised to pay (*or* That no agreement was made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth) the sum of rupees.

3. That the defendant has not paid the same.

("Demand of judgment.")

No. 24.

FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff transported in (his barge, *or otherwise*) (one thousand barrels of flour, *or* sundry goods), from to , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of (one rupee per barrel) as freight thereon. *Or*, that no agreement was made as to payment for such transportation, but that such transportation was reasonably worth rupees).

3. That the defendant has not paid the same.

"(Demand of judgment.)"

No. 25.

FOR PASSAGE-MONEY.

(Title.)

A, B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff conveyed the defendant (in his ship, called the), from to at his request.

2. That the defendant promised to pay the plaintiff rupees therefor. (*Or* that no agreement was made as to the price of the said passage; but that the said passage was reasonably worth rupeess).

3. That the defendant has not paid the same.

(*Demnad of judgment.*)

THE FOURTH SCHEDULE—*continued.*

No. 26.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant, having a controversy between them concerning (a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay), agreed to submit the same to the award of *E. F.* and *G H.*, as arbitrators (*or*, entered into an agreement, a copy of which is hereto annexed).

2. That on the day of 18 , at , the said arbitrators awarded that the defendant should (pay the plaintiff rupees).

3. That the defendant has not paid the same.

(Demand of judgment.)

(NOTE.—This will apply where the agreement to refer is not filed in court.)

No. 27.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above named plaintiff, states as follows :—

1. That on the day of 18 , at , in the state (*or* Kingdom) of , the Court of that State (*or* Kingdom), in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. That the defendant has not paid the same.

(Demand of judgment.)

PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

THE FOURTH SCHEDULE—*continued.*

1. That on the day of 18 , at , the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day of 18 , the sum of rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

(Demand of judgment.)

No 29.

PAYEE AGAINST MAKER.

(Title.)

1. That on the day of 18 , at , the defendant, by his promissory note now overdue, promised to pay to the plaintiff rupees (days) after date.

2. That he has not paid the same (except rupees, paid on the day of 18).

(Demand of judgment.)

(NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute—)

1. That on the day of 18 , at , the defendant by his promissory note promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

(*Where the note is payable at a particular place, say—*)

1.—That on the day of 18 , at , the defendant by his promissory note now overdue promised to pay to the plaintiff (at Messrs. "A. & Co.," Madras) rupees months after date.

2.—That the said note was duly presented for payment (at Messrs. *A. & Co.*) aforesaid, but has not been paid.

THE FOURTH SCHEDULE—*continued.*

Written Statement of the Defendant.

In the Court, &c.

C D., the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances : The plaintiff and defendant had for some years been in partnership as indigo-manufactures, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership-assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books and require into the state of the partnership-assets and liabilities ; and he did accordingly examine the said books and make the said enquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000 and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000, and the liabilities of the firm largely exceeded the

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

FIRST INDORSEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made (*or* purporting to have been made) by one E. F., on the day of 18 , at , requiring the defendant to pay to the order of one G. H. rupees after sight thereof.

2. That the said E. F. indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

1. *(As in the preceding form.)*

2. That the same was, by the indorsement of the said E. F. and of G. H. and I. J. (*or* and others) transferred to the plaintiff.

(Demand of judgment.)

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That *E. F.*, on the day of 18 , at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.

2. That the defendant indorsed the same to the plaintiff.

3. That on the day of 18 the same was duly presented for payment, but was not paid.

(*Or state facts excusing want of presentment.*)

4. That the defendant had notice thereof.

5. That he has not paid the same.

(Demand of judgment.)

No 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSEE; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made (*or* purporting to have been made) by one *G. H.*, on the day of 18 , at , to the order of the defendant, for the sum of rupees (payable days after date).

2. That the same was, by the indorsement of the said *E. F.* (and others), transferred to the plaintiff. (*Or,* that the said

THE FOURTH SCHEDULE—*continued.*

E. F. indorsed the same to the plaintiff.)

3, 4 and 5. (*Same as* 3, 4 *and* 5 *of the preceding form.*)

(Demand of judgment.

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to him a promissory note, now overdue, made (*or* purporting to have been made) by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees (payable days after date), and indorsed by the said *G. H.* to the defendant.

2, 3 and 4. (As *in* No. 33.)

(Demand of judgment.)

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a promissory note, now overdue, made (*or* purporting to have been made) by one *E F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees (payable days after date), and indorsed by the said *G. H.*, to the defendant, was by the indorsement of the defendant (and others) transferred to the plaintiff.

2, 3 and 4. (As in No. 33.)

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

No. 36.

SUBSEQUENT INDORSEE AGAINST MAKER, FIRST AND SECOND INDORSER.

IN THE COURT OF AT

Civil Suit, No.

A. B. of

against

C. D. of

E. F. of

and

G. H. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, C. D., by his promissory note, now overdue, promised to pay to the order of the defendant, E. F., rupees (months after date).

2. That the said E F. indorsed the same to the defendant, G. H., who indorsed it to the plaintiff.

3. That on the day of 18 , the same was presented (*or state facts excusing want of presentment*) to the said C. D. for payment, but was not paid.

4. That the said E F. and G. H. had notice thereof.

That they have not paid the same.

("Demand of judgment.")

No 37.

DRAWER AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows.—

1. That on the day of 18 , at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him rupees (days after date, *or* sight, thereof).

2. That the defendant accepted the said bill. (*If the bill is payable at a certain time after sight, the date of acceptance should be stated, otherwise it is not necessary.*)

THE FOURTH SCHEDULE—*continued.*

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonor thereof.

(*Demand of judgment.*)

(NOTE.—Where the bill is payable to a third party, for paragraghs 1, 2, 3, say—)

1. That on, *&c.*, at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to E. F. or order rupees months after date.

2. That the plaintiff delivered the said bill to the said E. F. on

3. That the defendant accepted the said bill, but did not pay the same, where upon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made (*or* purporting to have been made) by one E. F., on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.

2. That he has not paid the same.

(Demand of judgment.)

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

A B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made (*or* purporting to have been made) by one E. F., on the day of 18 ,

THE FOURTH SCHEDULE—*continued.*

at , requiring the defendant to pay to the order of one G. H. rupees after sight thereof.

2. That the said G. H. indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

("Demand of judgment.")

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. (*As in the preceding form, to the end of article* 1.)

2. That by the indorsement of the said G. H. (and others), the same was transferred to the plaintiff.

3. That the defendant has not paid the same

(Demand of judgment.)

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to E. F., required the said E. F. to pay to the plaintiff rupees (days after sight.)

2. That on the day of 18 , the same was duly presented to the said E. F. for acceptance, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

(*Demand of judgment.*)

(NOTE.—Notice of dishonour by non-acceptance must be given at once.)

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made (*or* purporting to have been made) by one E. F., on the day of 18 , at

THE FOURTH SCHEDULE—*continued.*

requiring one G. H. to pay to the order of the defendant rupees (days) after sight (*or* after date, *or* at sight,) thereof, (and accepted by the said G. H. on the day of 18).

2. That on the day of 18 , the same was presented to the said G. H. for payment, and was dishonoured.

3. That the defendant has due notice thereof.

4. That he has not paid the saime.

(Demand of judgment.)

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one E F. a bill of exchange, now overdue, made (*or* purporting to have been made) by one G. H., on the day of 18 , at , requiring one I. J. to pay to the order of the defendant rupees days after sight thereof (*or otherwise*), and accepted by the said I. J. on the day cf 18 , (*This clause may be omitted, if not according to the fact.*)

2. That the same was, by the indorsement of the said E. F. (and others), transferred to the plaintiff.

3. That on the day of 18 the same was presented to the said I. J. for payment, and was dishonoured.

4. That the defendant has due notice thereof.

5. That he has not paid the same.

(Demand of judgment)

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made (*or* purporting to have been made by one E. F., on the day of 18 , at

THE FOURTH SCHEDULE—*continued.*

requiring one G. H. to pay to the order of I. J. rupees days after sight thereof (*or otherwise*), (accepted by the said G. H.) and indorsed by the said I. J. to the defendant.

2. That on the day of 18 , the same was presented to the said G. H. for payment, and was dishonoured

3. That the defendant had due notice thereof.

4. That he has not paid the same.

(Demand of judgment.)

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That a bill or exchange, now overdue, made (*or* purporting to have been made) by one E. F., on the day of 18 , at , requiring one G. H. to pay to the order of one I. J. rupees days after sight thereof (*or otherwise*), accepted by the said G. H.) and indorsed by the said I. J. to the defendant, was, by the indorsement of the defendant (and others), transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said G. H. for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

(Demand of judgment.)

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF AT

Civil Suit, No.

A. B. of

against

C. D. of

E. F. of

G. H. of

THE FOURTH SCHEDULE—*continued.*

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, C. D., by his bill of exchange, now overdue, directed to the defendant E. F. required the said E. F. to pay to the order of the defendant G. H., rupees (days after sight thereof).

2. That on the day of 18 , the said E. F. accepted the same.

3. That the said G. H. indorsed the same to the plaintiff.

4. That on the day of 18 , the same was presented to the said E F. for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

(*Demand of judgment.*)

No. 47.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant by his bill of exchange drawn in Calcutta, required one *E. F.* to pay to the plaintiff in (London) pound sterling, (sixty days) after sight thereof.

2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

5. (That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.)

Wherefore the plaintiff demands judgment against the defendant for, rupees, with (ten per centum) compensation and interest from the day of 18 .

THE FOURTH SCHEDULE—*continued.*

No 48.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above named plaintiff, states as follows :—

1. That on the day of 18 , at , one E. F., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date (*or* days after sight) thereof.

2. That on the day of 18 , the defendant accepted the said bill.

3 That he has not paid the same.

(Demand of judgment.)

(NOTE.—This form omits to state the delivery of the bill to the plaintiff or his title to issue. See Churchill V. Gardner 7 T. R. 596.)

No. 49.

ON A MARINE (OPEN) POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &c.

(*Title.*)

A. B, the above-named plaintiff, states as follows :—

1. The plaintiff was the owner of (*or* had an interest in) the ship at the time of her loss, as hereinafter mentioned.

2 That on the day of 18 , at , the defendants, in consideration of rupees to them paid (*or* which the plaintiff then promised to pay) executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed ; (*or*, whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees).

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was on the day of 18 , totally lost by the perils of the sea (*or otherwise.*)

THE FOURTH SCHEDULE—*continued.*

4. That the plaintiff's loss thereby was rupees.

5 That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss,

(Demand of judgment.)

No. 50.

ON CARGO, LOST BY FIRE :—VALUED POLICY.

(Title.)

A B, the above-named plaintiff, states as follows :—

1. That plaintiff was the owner of (*or* had an interest in) (one hundred bales of cotton) on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid (*or* promised to pay), executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed ; (*or* whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or,* in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods).

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or*, as the case may be).

4, 5 and 6. (*As in paragraphs* 4, 5 *and* 6 *of the last preceding Form.*)

(Demand of judgment.)

No. 51.

ON FREIGHT :—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to

THE FOURTH SCHEDULE—*continued.*

, at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3 That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. (*as in Form No.* 49.)

(Demand of judgment.)

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of (*or* had an interest in) (one hundred bales of cotton) shipped on board a vessel called the Y. Z., from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees (which the plaintiff then promised to pay), the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed (*or state its tenor, as before*).

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the

THE FOURTH SCHEDULE—*continued.*

defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

(*Demand of judgment.*)

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(*Title.*)

A B., the above-named plaintiff, states as follows :—

1 and 2. [*As in the preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship and damaged the said (cotton) to the amount of rupees.

4. and 5. (*As in paragraphs* 5 *and* 6 *of the preceding Form.*

(*Demand of judgment.*)

No. 54.

ON A FIRE-INSURANCE POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff [was the owner of, *or*]. had an interest in a [dwelling house, known as No. , street, in the city of ,] at the time of its destruction [*or*, injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to it paid], the defendant executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [*or*, greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendant with proof of his said loss and interest, and other-

THE FOURTH SCHEDULE—*continued*

wise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

(Demand of judgment.

No 55.

AGAINST SURETIES FOR PAYMENT OF RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1 That on the day of 18 , at , one E. F. hired from the plaintiff, for the term of years, the [house No. , street ,] at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add:*—]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

(Demand of judgment.)

B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

FOR BREACH OF AGREEMENT TO CONVEY LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or* That on, &c , the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of ten thousand rupees payable as hereafter

THE FOURTH SCHEDULE—*continued.*

mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of (the house No. , street, in the city of free from all incumbrances; and the plaintiff agreed to pay ten thousand rupees for the same on delivery thereof).

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant [*or*, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. That the defendant has not executed any conveyance of the said property to the plaintiff [*or* That there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, *or any other defect of title.*

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

The plaintiff prays judgment for rupees compensation.

No. 57.

FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or* That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff, forty bigahs of land in the village of for rupees.]

THE FOURTH SCHEDULE—*continued.*

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [*or*, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument,] on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

(Demand of judgment.)

No. 58

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say)—

(*a*) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(*b*) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he

THE FOURTH SCHEDULE—*continued.*

incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

(Demand of judgment.)

No. 59.

FOR NOT DELIVERING GOODS SOLD.

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff (on the day of 18 ,) and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered, to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, wherby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

(Demand of judgment.)

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18 , the defend-

THE FOURTH SCHEDULE—*continued.*

ant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

(Demand of judgment.)

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. [*As in last preceding Form.*]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

(Demand of judgment.)

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(Title.)

A, B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at [an annual] compensation of rupees, and that the defendant should serve the plaintiff as (an artist) for the term of (one year).

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 offered so to do].

3. That the defendant (entered upon the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18 , he) refused to serve the plaintiff as aforesaid.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued*

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

(*Or state the tenor of the contract.*)

(2. That the plaintiff duly performed all the conditions of the said agreement on his part.)

3. That the defendant (built the house referred to in the said agreement in a bad and unworkmanlike manner).

(Demand of judgment.)

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(*Title.*)

A. B., the above named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal,* a copy of which is hereto annexed

(*or state the tenor of the covenants.*)

2. That after the making of the said agreement the plaintiff received the said (*Apprentice*) into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said (*apprentice*) wilfully absented himself from the service of the plaintiff, and continues so to do.

(Demand of judgment.)

* The form given in Act XIX of 18[illegible] requires the seal of the father or guardian.

THE FOURTH SCHEDULE—*continued.*

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day 18 , at , the defendant entered into an agreement with the plaintiff and his father, E. F., under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not (instructed the plaintiff in the business of , *or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment*).

(Demand of judgment.)

No 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A B, the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff employed one E. F. as a clerk.

2. That on the day of 18 , at the defendant agreed with the plaintiff, that if the said E. F should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

(*Or*, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said E. F. should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the

THE FOURTH SCHEDULE—*continued.*

plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void. but not otherwise.)

(*Or* 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is annexed).

3. That between the day of 18 and the day of 18 , the said E. F. received money, and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

(*Demand of judgment.*)

No. 67

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(*Title.*)

A. B , the above-named plaintiff, states as follows :—

1 That on the day of 18 , at , the defendant, by an instrument in writing, let, to the plaintiff (the house No. , street), for the term of years, covenanting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfiled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of during the said term, one E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby (prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of G. H. and I. J. by such removal).

(*Demand of judgment.*)

THE FOURTH SCHEDULE—*continued.*

No. 68.

For Breach of Warranty of Moveables.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which would otherwise have accrued to him while the engine was under repair.

(Demand of judgment.)

No. 69.

On an Agreement of Indemnity.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant, being partners in trade under the firm of A. B. & C. D., dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18 (a judgment was recovered against the plaintiff and defendant by one E. F., in the High Court of Judicature at , upon a debt due from the said firm to the said E. F., and on the day of 18) the plaintiff paid rupees (in satisfaction of the same).

4. That the defendant has not paid the same to the plaintiff.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

No. 70.

BY SHIP-OWNER AGAINST FREIGHTOR FOR NOT LOADING.

(Title)

A. B., the above named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement a copy of which is hereto annexed.

(*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at , on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day.)

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive (the said merchandise, *or*, the merchandise mentioned in the said agreement) from the defendant.

3. That the period allowed for the loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No 71.

FOR TRESPASS ON LAND.

(*Title.*)

A. B, the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered upon certain land of the plaintiff, known as (and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same).

(Demand of judgment)

THE FOURTH SCHEDULE—*continued.*

No. 72.

For Trespass in entering a Dwelling-house.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

(Demand of judgment.)

No. 73.

For Trespass on Movable.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street (*or*, seized and took the plaintiff's goods, that is to say, iron, rice and house-hold furniture, *or as the case may be*, and carried away the same and disposed of them to his own use:)

(*or*, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.)

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff, (*otherwise state the injury according to the facts*).

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

No. 74.

For the Conversion of Moveable Property.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff was in possession of certain goods described in the schedule hereto annexed (*or*, of one thousand barrels of flour).

2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

(*Demand of judgment.*)

No. 75.

Against a Warehouseman for Refusal to deliver Goods.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant, in consideration of the payment to him of rupees (*or*, rupees per barrel, per month, &c.) agreed to keep in his godown (one hundred barrels of flour), and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said (hundred barrels of flour).

3. That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees (*or* the full amount of storage due thereon), but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

(Demand of judgment.)

No. 76.

For procuring Property by Fraud.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell him

THE FOURTH SCHEDULE—*continued.*

certain goods, represented to the plaintiff that (he, the defendant, was solvent, and worth rupees over all his liabilities).

2. That the plaintiff was thereby induced to sell (and deliver) to the defendant (dry goods) of the value of rupees.

3. That the said representations were false (*or, state the particular falsehoods*), and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. (*Or if the goods were not delivered*). That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees

(Demand of judgment.)

No 77.

For fraudulently procuring Credit to be given to another Person.

(*Title.*)

A. B. the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant represented to the plaintiff, that one E. F. was solvent and in good credit, and worth rupees over all his liabilities (*or*, that *E. F.* then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit).

2. That the plaintiff was thereby induced to sell to the said *E. F.* (rice) of the value of rupees (on month's credit).

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff (*or*, to deceive and injure the plaintiff).

4. That the said *E. F.* (did not pay for the said goods at the expiration of the credit aforesaid, *or*,) has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued*.

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called   and situate in   , and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the   day of   18   , the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

(Demand of judgment.)

No 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called   situate in

2. That ever since the   day of   18   , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the

THE FOURTH SCHEDULE—*continued.*

said lands became unhealthy, and divers of them were poisoned and died.

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

(Demand of judgment.)

No. 80.

FOR OBSTRUCTING A WAY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1 That the plaintiff is, and at the time hereinafter mentioned was, possessed of (a house in the village of).

2. That he was entitled to a right of way from the said (house) over a certain field to a public high way and back again from the said high way over the said field to the said house, for himself and his servants (with vehicles, *or*, on foot) at all times of the year.

3. That on the day of 18 , defendant wrongfully obstructed the day way, so that the plaintiff could not pass (with vehicles, *or*, on foot, *or*, in any manner) along the said way (and has ever since wrongfully obstructed the same.)

4. (*State special damage, if any.*)

(*Demand of judgment.*)

[Oth]er Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. That thereby the plaintiff while lawfully passing along the said highway, fell over the said earth and stones (*or*, into the said trench) and broke his arm, and suffered great pain

THE FOURTH SCHEDULE—*continued.*

and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

(Demand of judgment.)

No. 81.

FOR DIVERTING A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a (stream) known as the , in the village of , district of

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the day of 18 , the defendant by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plantiff's mill.

4. That by reason thereof, the plantiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

(*Demand of judgment.*)

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c, and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plantiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

No. 83.

FOR WASTE BY A LESSEE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant hired from him [the house No. , street] for the term of

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors ; *or otherwise specify the injuries as far as possible*].

The plaintiff prays judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(Title.)

A. B., the above named plaintiff, states as follows :—

That on the day of 18 , at , the defendant assulted and beat him.

The plaintiff prays judgment for rupees conpensation.

No. 85.

FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant assulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six week thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled (from using his right arm). (*Or otherwise state the damage, as the case may be.*)

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

No. 86.

FOR ASSAULT AND FALSE IMPRISONMENT.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant assulted the plaintiff and imprisoned him for days (*or hours*) ; (*state special damage, if any, thus :*—)

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment (*or otherwise, as the case may be*).

(Demand of judgment.)

No. 87.

FOR INJURIES CAUSED BY NEGLIGECE ON A RAILROAD.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and .

2. That on that day the plaintiff was a passenger in one of the carriages on the defendants on the said road.

3. That while he was such passenger, at (*or*, near the station of ; *or*, between the stations of and), a collision occured on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured (having his leg broken, his head cut, &c., *and state the special demage, if any, as*), and incurred expense for medical attandace, and is permanently disabled for carrying on his former business as a salesman.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

Or thus :—2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendats' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, *&c.*, *as in* $ 3).

No 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoe-maker, carrying on business at . The defendant is a merchant of

2. On the (23rd May 1875), the plaintiff was walking eastward along Chowringhee, in the city of Calcutta, at about three o' clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot pavement on the further side thereof, a carriage of the defendant's drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dengerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff, and knecked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plantiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four moths ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(*Title.*)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the def ndant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to (*Messrs.* E. *F.* and G. H.) of street,

THE FOURTH SCHEDULE—*continued*.

Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said Messrs. *E.* F. and G. H.

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approching him, and avoided any collision with it.

4. The defendant does not admit the statments of the third paragraph of the plaint.

No. 89.

FOR LIBEL: THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a news paper, called the (*or*, in a letter addressed to E. F.), the following words concerning the plaintiff:—

(*Set forth the words used.*)

2. That the said publication was false and malicious.

(*Demand of judgment.*)

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—"which said words, being translated into the language, have the meaning and effect following, and were so understood by the persons to whom they were so published, that is to say, *here set out literal translation of the lible in the language of the Court.*)

THE FOURTH SCHEDULE—*continued*.

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B, the above-named plaintiff, states as follows:—

1. That the plaintiff (is, and) was, on and before the day of 18 a merchant, doing business in the city of.

2. That on the day of 18 , at , the defendant published in a newspaper, called the (*or*, in a letter addressed to *F. F.*, *or otherwise show how published*), the following words concerning the plaintiff:—

("*A. B.* of this city, has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address.")

3. That the defendant meant thereby that (the plaintiff had absconded to avoid his creditors, and with intent to defraud them).

4. That the said publication was false and malicious.

(Demand of judgment.)

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day 18 , at , the defendant falsely and maliciously spoke, in the hearing of *E. F.* (*or*, sundry persons) the following words concerning the plaintiff: ("He is a thief").

2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of

(Demand of judgment.)

[No.] 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B, the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the

THE FOURTH SCHEDULE—*continued.*

defendant falsely and maliciously said to one E. F. concerning the plaintiff: ("He is a young man of remarkably easy conscience.)"

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3 That, in consequence of the said words, (the said E. F. refused to employ the plaintiff as a clerk).

(Demand of judgment.)

No. 93.

FOR MALICIOUS PROSECUTION.

(*Title.*)

A. B, the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from (a magistrate of the said city, *or, as the case may be,*) on a charge of , and the plaintiff was arrested thereon, and imprisoned for (days, *or*, hours, and gave bail in the sum of rupees to obtain his release).

2. That in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or*; that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F., *or*, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

(Demand of judgment.)

THE FOURTH SCHEDULE—*continued.*

D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That X. Y. was the absolute owner of (the estate, *or*, the share of the estate, called , situate in the district of , the Government-revenue of which is rupees and the estimated value rupees *or*, of the house No. , street in the town of Calcutta, the estimated value of which is rupees).

2. That on the day of 18 , Z. illegally dispossessed the said X. Y. of the said estate (*or* share *or* house).

3. That the said X. Y. has since died intestate, leaving the plaintiff the said A. B. his heir him surviving.

4. That the defendant withholds the possession of the estate (*or* share *or* house) from the plaintiff.

The plaintiff prays judgment:

(1) for the possession of the said premises;

(2) for rupees compensation for withholding the same.

Another form.

A. B., the above-named plaintiff states as follows:—

1. On the day of , the plaintiff, by an instrument in writing let to the defendant a house and premises (No. 52, Russell Street, in the) for a term of five years from the day of , at the monthly rent of rupees 300.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty one days, or in case any

THE FOURTH SCHEDULE—*continued.*

defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due and on the day of 18 another month's rent became due; on the day of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims:

(1) possession of the said house and premises:

(2) rupees for arrears of rent:

(3) rupees compensation for the defendant's breach of his covenant to repair,

(4) rupees for the occupation of the house and premises from the day of 18 to the day of recovering possession.

No. 95.

BY THE TENANT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That one E. F. is the absolute owner of (a piece of land in the town of Calcutta , bounded as follows:), the estimated value of which is rupees .

2. That on the day of 18 , the said E. F. let the said premises to the plaintiff for years, from .

3. That the defendant withholds the possession thereof from the plaintiff.

(Demand of judgment.)

No. 96.

FOR MOVABLE PROPERTY WRONGFULLY TAKEN.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff owned

THE FOURTH SCHEDULE—*continued.*

(*or* was possessed of) one hundred barrels of flour, the estimated value of which is rupees .

2. That on the day, at , the defendant took the same.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees in case such possession cannot be had ;

(2) for rupees compensation for the detention thereof.

No. 97

FOR MOVABLE WRONGFULLY DETAINED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff owned (*or state facts showing a right to the possession*) the goods mentioned in the schedule hereto annexed (*or describe the goods*) the estimated value of which is rupees.

2 That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment :

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had ;

(2). for rupees compensation for the detention thereof.

The schedule.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant (C. D.), for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that (he

THE FOURTH SCHEDULE—*continued.*

was solvent, and worth rupees over all his liabilities.

2. That the plaintiff was thereby induced to sell and deliver to the said C D. (one hundred boxes of tea), the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said C. D. to be so (*Or*, that at the time of making the said representations, the said C. D. was insolvent, and knew himself to be so)

4. That the said C. D. afterwards transferred the said goods to the defendant E. F., without consideration (*or* who had notice of the falsity of the representation).

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained (ten bighas).

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only (five bighas).

The plaintiff prays judgment:

THE FOURTH SCHEDULE—*continued*

(1) for rupees, with interest from the day of 18 ;

(2) that the said agreement of purchase be delivered up and cancelled.

No. 100

FOR AN INJUNCTION RESTRAINING WASTE

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

(1) That plaintiff is the absolute owner of (*describe the property*).

(2) That the defendant is in possession of the same under a lease from the plaintiff.

(3) That the defendant has (cut down a number of valuable trees and threatens to cut down many more for the purpose of sale) without the consent of the plaintiff.

The plaintiff prays judgment, that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

Pecuniary compensation might also be prayed).

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

(1) That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of (the house No. , street, Calcutta).

(2) That the defendant is, and at all the said times was the absolute owner of (a plot of ground in the same street)

3. That on the day of 18 , the defendant erected upon his said lot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there (and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff).

THE FOURTH SCHEDULE—*continued.*

4. That (the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same).

The plaintiff prays judgment, that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

[*As in* No. 81.]

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

FOR RESTORATION OF MOVABLE PROPERTY, THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of (a portrait of his grandfather, which was executed by an eminent painter), and of which no duplicate exists (*or state any facts showing that the property is of a kind that cannot be replaced by money*).

2. That on the day of 18 , he deposited the same for safe-keeping with the defendant.

3. That on the day of 18 , he demanded the same from the defendant, and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the said (painting).

The plaintiff prays judgment :

THE FOURTH SCHEDULE—*continued.*

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said (painting);
(2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title)

A. B., the above named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned one G. H deposited with the plaintiff (*describe the property*) for (safe keeping).

2. That the defendant, C. D., claims the same (under an alleged assignment thereof to him from the said G. H)

3. That the defendant, E. F., also claims the same (under an order of the said G. H. transferring the same to him).

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment.

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto,
(2) that they be required to interplead together concerning their claims to the said property;
[(3) that some person be authorized to receive the said property pending such litigation];
(4) that upon delivering the same to such (person), the plaintiff be discharged from all liability to either of the defendants in relation thereto.

THE FOURTH SCHEDULE—*continued.*

No. 105.

ADMINISTRATION BY CREDITOR.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. E. F , late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of (*here insert nature of debt and security, if any*).

2. The said E F. made his will, dated the day of and thereof appointed C. D. executor (*or*, devised his estate in trust, &c., *or*, died intestate *as the case may be*)

3. The said will was proved by the said C. D. (*or*, letters of administration were granted, &c)

4. The defendant has possessed himself of the movable (and immoveable *or*, the proceeds of the immovable) property of the said E. F., and has not paid the plaintiff his said debt.

5. The said E. F. died on or about the day of

6. The plaintiff pray that an account may be taken of the movable (and immovable) property of the said *E. F*, deceased and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title)

(*Alter Form* No. 105 *thus* :—)

(*Omit paragraph* 1 *and commence paragraph* 2) E. F., late of , duly made his last will, dated the day of and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff (*here state the specific legacy.*)

For paragraph 4, *substitute*—

The defendant is in possession of the movable property of the said *E. F.* and, amongst other things, of the said (*here name the subject of the specific bequest.*)

For the commencement of paragraph 6 *substitute*—

THE FOURTH SCHEDULE—*continued*

The plaintiff prays that the defendant may be ordered to deliver to him the said (*here name the subject of the specific bequest*) or that, &c.

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

(*Alter Form No.* 105 *thus* :—)

(*Omit paragraph* 1 *and substitute for paragraph* 2) *E F*, late of , duly made his last will, dated the day of , and thereof appointed C D. executor, and by such will bequeathed to the plaintiff a legacy of rupees.

In paragraph 4, *substitute* "legacy" *for* "debt".

Another Form.

Between E. F. ... *Plaintiff.*

and

G H. ... *Defendant.*

E F, the above named plaintiff, states as follows :—

1. A. B of K in the duly made his last will, dated the (first day of March, 1873), whereby he appointed the defendant and M. N. (who died in the testator's life-time) executors thereof, and bequeathed his property, whether movable, or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the (first day of July, 1878), and his will was proved by the defendant on the (fourth day of October, 1878). The plaintiff has not been married.

THE FOURTH SCHEDULE—*continued.*

3. The testator was at his death entitled to movable and immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the movable property; he has sold some part of the immovable property.

The plaintiff claims—

(1) to have the movable and immovable property of A B administered in this Court, and for that purpose to have all proper directions given and accounts taken,

(2) such further or other relief as the nature of the case may require.

Between E F. ... *Plaintiff*

and

G. H. ... *Defendant.*

Written Statement of Defendant

1. A. B.'s will contained a charge of debts, he died insolvent; he was entitled at his death to some immovable property which the defendant sold, and which produced the nett sum of rupees , and the testator had some movable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the tenth day of January, 1875, and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4 The defendant submits that the plaintiff ought to pay the costs of this suit.

THE FOURTH SCHEDULE—*continued.*

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF , AT .

Civil Suit, No. .

A. B. of ... *Plaintiff,*

against

C. D. of the beneficiary *or*, one of the beneficiaries) ... *Defendant.*

A. B., the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of E. F. add *G. H.*, the father and mother of the defendant (*or*, an instrument of assignment of the estate and effects of E. F. for the benefit of *C. D.*, the defendant, and other the creditors of E. F.)

2. The said A. B. has taken upon himself the burden of the said trust, and is in possession of (*or*, of the proceeds of) the movable and immovable property conveyed (*or* assigned)by the before-mentioned deed.

3. The said C. D. claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immovable property (and the proceeds of the sale of the said, *or*, of part of the said, immovable property, *or* movable, *or* the proceeds of the sale of *or* of part of, the said movable, property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust); and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said C. D. the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D. and such other persons so interested as the Court may direct, or that the said C. D. may show good cause to the contrary

(N. B.—*where the suit is by a beneficiary, the plaint may be modelled*, mutatis mutandis, *on the plaint by a legatee.*)

THE FOURTH SCHEDULE—*continued.*

No. 109.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. By a mortgage deed dated the day of 18 , a house with the garden and appurtenances situated within the jurisdiction of this Court, were conveyed by the defendant to him the plaintiff, his heirs (*or* executors administrators,) and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs. with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises; or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs; and (*c*) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent per annum until realization; and (*d*) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(Title.)

[*Alter Form* 109 *thus* :—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, *substitute*—

THE FOURTH SCHEDULE—*continued.*

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs. which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to re-convey [*or* re-assign] the same to him upon payment of the said sum of Rs. and interest, with such costs (if any) as the Court may order upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance (*or* assignment), and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No 111.

Specific Performance. (No. 1.)

(*Title.*)

A. B, the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the above-named defendant, C D., he the said C. D. contracted to buy of (*or* sell to) him certain immovable property therein described and referred to, for the sum of Rs.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3. The said A. B has been and still is ready and willing specially to perform the agreement on his part, of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said A. B. specially to perform the said agreement and to do all acts necessary to put the said A. B. in full possession of the said property (*or* to accept a conveyance and possession of the said property) and to pay the costs of the suit.

[N. *B.—In suit for delivery up, to be cancelled, of any agreement omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agree-*

THE FOURTH SCHEDULE—*continued.*

ment to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under distress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]

No 112.

SPECIFIC PERFORMANCE. (No. 2)

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4 That on day of 18 , the plaintiff again demanded such conveyance. [*Or,* that the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment :

(1) that the defendant excute to the plaintiff as sufficient conveyance of the said property [*following the terms of the agreement*];

(2) for rupees compensation for withholding the same.

No 113.

PARTNERSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. He and the said C. D., the defendant, have been for the space of years (*or* months) last past carrying on business together at within the jurisdic-

THE FOURTH SCHEDULE—*continued.*

tion of this Court, under certain of partnership in-writing, signed by them respectively, (*or.* under the certain deed sealed and executed by them respectively, *or*, under a verbal agreement between them, the said plaintiff and defendant).

2 Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to he partners.

3. The pla ntiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debt and obligations of the partnership according to the terms of the said articles (*or* deed, *or* agreement).

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into court any balance due rom him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assests, and that any balance remaining of such assests, after such payment and discharge, and the payment of the said costs may be divided between the plaintiff and defendant, according to the terms of the said articles [*or* deed, *or* agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by of , pleader for the plaintiff, *or* by

[N. B —*In suits for winding-up of any partnership, omit the prayer for dissolution : but instead thereof insert a paragraph stating the fact of the partnership having been disolved.*]

THE FOURTH SCHEDULE—*continued*

No. 114.

Forms of concise Statements.

(Code of Civil Procedure, section 58.)

Money lent. The plaintiff's claim is rs. for money lent (and interest).

Several demands. The plaintiff's claim is rs, whereof rs. is for the price of goods sold, and rs. for money let, and rs. for interest.

Rent. The plaintiff's claim is rs for arrears of rent.

Salary, &c. The plaintiff's claim is rs. for arrears of salary as a clerk (*or, as the case may be*).

Interest. The plaintiff's claim is rs. for interest upon money lent.

General average. The plaintiff's claim is rs. for a general average contribution.

Freight, &c. The plaintiff's claim is rs. for freight and demurrage.

Banker's balance. The plaintiff's claim is rs. for money deposited with the defendant as a banker.

Fees, &c., as pleader. The plaintiff's claim is rs. for fees for work done (and rs. money expended) as a pleader.

Commission The plaintiff's claim is rs. for commission earned as (*state character*—as auctioneer, cotton broker, &c.).

Medical attendance, &c. The plaintiff's claim is rs. for medical attendance.

Return of premium. The plaintiff's claim is rs. for a return of premiums paid upon policies of insurance.

Warehouse-rent. The plaintiff's claim is rs. for the warehousing of goods.

Carriage of goods. The plaintiff's claim is rs. for the carriage of goods by railway.

THE FOURTH SCHEDULE—*continued.*

Use and occupation of houses.

The plaintiff's claim is rs. for the use and occupation of a house.

Hire of goods.

The plaintiff's claim is rs. for the hire of [furniture].

Work done.

The plaintiff's claim is rs. for work done as a [surveyor].

Board and lodging.

The plaintiff's claim is rs. for board and lodging.

Schooling.

The plaintiff's claim is rs. for the (board, lodging and) tuition of *X. Y.*

Money received.

The plaintiff's claim is rs. for money received by the defendant as pleader (*or* factor, *or* collector, *or &c.*) of the plaintiff.

Fees of office.

The plaintiff's claim is rs. for fees received by the defendant under colour of the office of .

Money overpaid.

The plaintiff's claim is rs. for a return of money overcharged for the carriage of goods by railway:

The plaintiff's claim is rs. for a return of fees overcharged by the defendant as .

Return of money by stake-holder.

The plaintiff's claim is rs. for a return of money deposited with the defendant as stake-holder.

Money won from stake-holder.

The plantiff's claim is rs. for money entrusted to the defendant as stake-holder and become payable to plaintiff.

Money entrusted to agent.

The plaintiff's claim is rs. for a return of money entrusted to the defendant as agent of the plaintiff

Money obtained by fraud.

The plaintiff's claim is rs. for a return of money obtained from the plaintiff by fraud.

THE FOURTH SCHEDULE—*continued.*

Money paid by mistake.

The plaintiff's claim is rs. for a return of money paid to the defendant by mistake.

Money paid for consideration which has failed.

The plaintiff's claim is rs. for a return of money paid to the defendant for (work to be done, *or*, work left undone , *or*, a bill to be taken up, *or*, a bill not taken up ; *or &c.*)

The plaintiff's claim is rs. for a return of money paid as a deposit upon shares to be allotted.

Money paid by surety for defendant.

The plaintiff's claim is rs. for money paid for the defendant as his surety.

Rent paid.

The plaintiff's claim is rs. for money paid for rent due by the defendant.

Money paid on accommodation-bill.

The plaintiff's claim is rs. upon a bill of exchange accepted (or endorsed) for the defendant's accommodation.

Contribution by surety.

The plaintiff's claim is rs. for a contridution in respect of money paid by the plaintiff as surety.

By co-debtor.

The plaintiff's claim is rs. for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

Money paid for calls.

The plaintiff's claim is rs. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

Money payable under award.

The plaintiff' claim is rs. for money payable under an award.

Life-policy.

The plaintiff's claim is rs. upon a policy of insurance upon the life of. *X. Y.* deceased.

THE FOURTH SCHEDULE—*continued.*

Money-bond

The plaintiff's claim is rs. upon a bond to secure payment of rs. and interest.

Foreign judgment.

The plaintiff's claim is rs. upon a judgment of the Court in (the empire of Russia).

Bills of exchange' &c.

The plaintiff's claim is rs. upon a cheque drawn by the defendant.

The plaintiff's claim is rs. upon a bill of exchange accepted (*or* drawn, *or* indorsed) by the defendant.

The plaintiff's claim is rs. upon a promissory note made (*or* indorsed) by the defendant.

The plaintiff's claim is rs. against the defendant, *A. B.*, as acceptor, and against the defendant, *C. D.*, as drawer(*or* indorser) of a bill of exchange.

Surety.

The plaintiff's claim is rs. against the defendant as surety for the price of goods sold.

The plaintiff's claim is rs. against the defendant, *A. B.*, as principal, and against the defendant, *C. D.*, as surety, for the price of goods sold (*or* for arrears, of rent, *or* for money lent, *or* for money received by the defendant, *A. B*, as traveller for the plaintiff, *or*, &c).

Calls.

The plaintiff's claim is rs. for calls upon shares.

Indorsement for Costs, &c

(*Add to the above Forms*) and rs. for costs ; and if the amount claimed be paid to the plaintiff or his pleader within days (*or, if the summons is to be served out of the*

THE FOURTH SCHEDULE—*continued.*

jurisdiction, insert the time for appearance limited by the order) from the service hereof, further proceedings will be stayed.

Damages and other Claims.

Agent, &c. — The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller (and rs. for arrears of wages).

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor (*or, &c.,*) of the plaintiff (and rs. for money received as factor, *or,* &c)

Apprentices — The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X Y. to the defendant (*or* plaintiff)

Arbitration. — The plaintiff's claim is for damages for noncompliance with the award of X. Y.

Assault, &c. — The plaintiff's claim is for damages for assault (and false imprisonment, and for malicious prosecution).

By husband and wife. — The plaintiff's claim is for damages for assault and false imprisonment, of the plaintiff, C. D.

Against husband and wife. — The plaintiff's claim is for damages for assault by the defendant, C. D.

Pleader. — The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.

THE FOURTH SCHEDULE—*continued.*

Bailment. The plaintiff's claim is for damages, for negligence in the custody of goods (and for wrongfully detaining the same).

Pledge. The plaintiff's claim is for damages for negligence in the keeping of goods pawned (and for wrongfully detaining the same).

Hire. The plaintiff's claim is for damages for negligence in the custody of furniture (*or* a carriage) lent on hire, (and for wrongfully, &c.)

Banker. The plaintiff's claim is for damages for wrongfully neglecting (*or* refusing) to pay the plaintiff's cheque.

Bill. The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

Bond. The plaintiff's claim is upon a bond conditioned not to carry on the trade of a [illegible].

Carrier. The plaintiff's [illegible] damages [illegible] refusing to carry [illegible] plaintiff's goods [illegible] railway.

The plaintiff's claim is for damages for [illegible] to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Charter-party. The plaintiff's claim is for damages for breach of charter-party of ship (*Mary*).

Claim for return of goods, damages. The plaintiff's claim is for return of household furniture, (*or, &c.*) or their value, and for damages for detaining the same.

Damages for depriving of goods. The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

THE FOURTH SCHEDULE—*continued.*

Defamation.

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

wrongful distress.

The plaintiff's claim is for damages for improperly distraining.

[*This Form shall be sufficient, whether the distress complained of be wrongful, or excessive, or irregular.*]

Ejectment.

The plaintiff's claim is to recover possession of a house, No. , in Street, or of a farm, called Blackacre, situate in the of in the of .

To establish title and recovered rents.

The plaintiff's claim is to establish his title to (*here describe property*) and to recover the rents thereof.

[*The two previous Forms may be combined.*]

Fishery.

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.

Fraud.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse (*or a business, or shares, or, &c.*)

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

Guarantee.

The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

Insurance.

The plaintiff's claim is for a loss under a policy upon the ship (*Royal Charter*), and freight of cargo (*or for return of premiums*),

THE FOURTH SCHEDULE—*continued.*

(This Form should be sufficient whether the loss claimed be total or partial.)

Fire-insurance.

The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant.

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of convenants contained in a lease of a farm.

Medical man.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal.

The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

Act XIII of 1855.

The plaintiff's claim is as executor of A. B., deceased, for damages for the death of the said A. B from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage.

The plaintiff's claim is for damages for breach of promise of marriage.

THE FOURTH SCHEDULE—*continued*

Sale of goods.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for nondelivery (*or* short delivery, *or* defective quality *or other breach of contract of sale*) of cotton (*or &c.*)

The plaintiff's claim is for damages for breach of warranty of a horse.

Sale of land.

The plaintiff's claim is for damages for breach of a contract to sell (*or* purchase) land.

The plaintiff's claim is for damages for breach of a contract to let (*or* take) a house

The plaintiff's claim is for damages for breach of a contract to sell (*or* purchase) the lease, with good-will, fixtures, and stock-in-trade of a public house.

The plaintiff's claim is for damages for breach of covenant for title (*or* for quiet enjoyment, *or*, &c.) in a conveyance of land.

Trespass on land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well (*or* cutting his grass, *or* feeling his timber, *or* pulling down his fences, *or* removing his gate *or* using his road or path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river).

Support.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land (*or* house, *or* mine).

Way.

The plaintiff's claim is for damages for wrongfully obstructing a way (public highway, *or* private way).

THE FOURTH SCHEDULE—*continued.*

Water-course &c. The plaintiff's claim is for damages for wrongfully diverting (*or* obstructing, *or* polluting, *or* diverting water from) a water-course.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land (*or* into the plaintiff's mine.)

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture. The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture

(*This Form shall be sufficient whatever the nature of the right to pasture be.*)

Light. The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

Patent. The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

Copy-right The plaintiff's claim is for damages for the infringement of the plaintiff's copy-right.

Trade-mark. The plaintiff's claim is for damages for wrongfully using (*or* imitating) the plaintiff's trade-mark.

Work. The plaintiff's claim is for damages for breach of a contract to build a ship (*or* to repair a house, &c).

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

Nuisance. The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (*or* &c.)

THE FOURTH SCHEDULE—*continued.*

The plaintiff's claim is for damages from nuisance by noise from the defendant's works (*or* stables, *or*, &c)

Injunction. (*Add to indorsement*) :—and for an injunction.

(*Add to indorsement where claim is to land, or to establish title, or both*):—

Mesne profits. and for mesne profits.

Arrears of rent. and for an account of rents or arrears of rent.

Breach of covenant. and for breach of covenant for (repairs)

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of X. Y., of deceased to have the movable and immovable property of the said X. Y. administered. The defendant, C. D., is sued as the administrator of the said X. Y. (and the defendants, E. F. and G. H, as his co-heirs at law)

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of X Y., deceased, to have the movable and immovable property of the said X. Y. administered. The defendant, C. D., is sued as the executor of the said X. Y. (and the defendants, E. F. and G. H., as his devisees).

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant (under articles of partnership dated the day of), and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal interest and costs on a mortgage dated the day of , made between (*parties*) (*or*, by deposit of title-deeds,) and that the mortgage may be enforced by foreclosure or sale.

THE FOURTH SCHEDULE—*continued.*

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between (*parties*), and to redeem the property comprised therein.

6. *Raising Portions.*

The plaintiff's claim is that the sum of Rs. which by a deed of settlement, dated , was provided for the portions of the younger children of may be raised.

7 *Execution of Trusts.*

The plaintiff's claim is to have the trusts of an indenture dated, and made between (*parties*) carried into execution.

8. *Cancellation or Rectification.*

The plaintiff's claim is to have a deed dated and made between (*parties*) set aside or rectified.

9. *Specific Performance.*

The plaintiff's claim is for specific performance of an agreement dated the day of for the sale by the plaintiff to the defendant of certain (freehold) hereditaments at

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No 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the day of of C. D., late of , deceased who died on the day of , and to have the said will established. This summons is issued against you as one of the said deceased (*or as the case may be*).

2. *By an executor or legatee of a former will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will dated the day of of C. D., late of , deceased, who died on the day of and to have the probate of a pretended will of the said deceased, dated the day of revoked. This summons is issued against you as the executor of the said pretended will (*or, as the case may be*)

THE FOURTH SCHEDULE—*continued.*

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of C. D. late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of C. D., of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased (*or, as the case may be*).

F.—MISCELLANEOUS.

No. 116.

Section 58 of the Code of Civil Procedure.

COURT of the   of   holden at

REGISTER OF CIVIL SUITS in the year 18   .

Date of pres[illegible] plaint.	No. of Suit.	PLAINTIFF.			DEFENDANT.			CLAIM.			APPEARANCE.			JUDGMENT			APPEAL.		EXECUTION.					RETURN OF EXECUTION.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.	Amount or value.	When the Cause of Action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or amount.	Date of appeal.	Judgment in Appeal.	Date of Application.	Date of Order.	Against whom.	For what and amount if mony.	Amount of Costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment, or Arrest and date of every Return.

THE FOURTH SCHEDULE—*continued.*

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To .

dwelling at

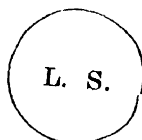
WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the day of 18 , at o'clock in the fore-noon, to answer the above-named plaintiff , and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence, and you will bring with you, or send by your pleader , which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have subpœnas from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court this day of 18 .



Judge

NOTE.—*If written statements are required, say*—You are (*or* such a party is, *as the case may be*) required to put in a written statement by the day of .

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a duly authorised pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompained by some other person able to answer all such questions, on the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the

Notice.—1. Should you apprehend your witnesses will not attend of their own accord you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money

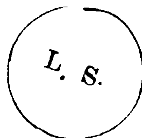
2.—If you admit the de-

THE FOURTH SCHEDULE—*continued.*

mand, you should pay the money into court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both if necessary.

issues will be settled in your absence; and you will bring with you, or send by your pleader , which the plaintiff desire to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under may hand and the seal of the Court this day of 18 .



Judge.

NOTE.—*If written statements are required, say*—you are (*or such a party is, as the case may be*) required to put in a written statement by the day of .

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. *of suit.*

IN THE COURT OF AT .

Plaintiff.

Defendant.

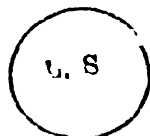
To

Name, description and adress).

WHEREAS (*here enter the name, description and address of the plaintiff*) has instituted a suit in this Court against you (*here state the particulars of the claim as in the register*): you are hereby summoned to appear in this court in person on the day of at in the forenoon (*If not specially required to appear in person state*—"in person or by a pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other

THE FOURTH SCHEDULE—*continued.*

person able to answer all such questions") to answer the above-named plaintiff (*If the summons be for the final disposal of the suit, this further direction shall added here*; "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day") ; and you are hereby required to take notice that in default of your appearance on the day before-mentioned, in your absence ; and you will bring with you (or send by your agent) *here mention any document the production of which may be required by the plaintiff*), which the plaintiff desires to inspect and any document on which you intend to rely in support of your defence.



Judge.

GIVEN under my hand and the seal of the Court this day of 18 .

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18

A. B. of

against

C. D of

The day of 18

WHEREAS it is stated in the plaint that , the defendant in the above suit is at present residing in but that the right to sue accrued within the jurisdiction of this Court : it is ordered that a summons returnable on the day of 18 be forwarded for service on the said defendant,

THE FOURTH SCHEDULE—*continued.*

to the Court of with a duplicate of this proceeding.

L. S.

Judge.

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

The day of 18

A. B. of

against

C. D. of

Read proceeding from the forwarding for service on in civil No. of that Court.

Read plaintiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the (oath *or*) affirmation of and it is ordered that the be returned to the with a copy of this proceeding.

L. S.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

THE FOURTH SCHEDULE—*continued*

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(*Title.*)

I, the undersigned defendant (*or* one of the defendants), disclaim all interest under the will of the said *E. F.* in the plaint, named (*or*, as heir-at-law, *or*, as next-of-kin, *or* one of the next-of-kin, of *E. F.*, deceased, in the said plaint named),

Or, I, the undersigned defendant, state that I admit (*or* deny *here repeat in the language of the plaint the statements admit or denied.*)

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced (*or*, that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, *or*, that it appears by the said plaint that *G. H.* should have been a joint plaintiff with the said *A. B.* in the said suit, *or*, *as the case may be*).

Or, that the plaintiff has conveyed his interest in the said mortgage (*or* right to redeem) to one I. J. (*or*, that I have conveyed or assigned to H. L. by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed).

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading (*or*, *as the case may be*).

(*Signed*) C. D.,

Defendant.

THE FOURTH SCHEDULE—*continued.*

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT ,

Civil Suit, No of 18

A B

against

C. D., E. F. and G. H.

Interrogatories on behalf of the above-named A. B (*or* C D.) for the examination of the above-named (E. F. and G. H., *or* A B.)

1. Did not, &c.
2. Has not, &c.

The defendant E. F. is required to answer the interrogatories numbered

The defendant G. H. is required to answer the interrogatories numbered

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No. 124.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT ,

Civil Suit, No. of 18 ,

A B

against

C. D.

Take notice that the plaintiff (*or* defendant) require you to produce for his inspection the following documents referred to in your plaint (*or* written statement, *or* affidavit), dated the day of 18 .

Describe documents required.

X. Y., pleader for the plaintiff (*or* the defendant)

To Z.,

pleader for the defendant (*or* plaintiff).

THE FOURTH SCHEDULE—*continued.*

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(*Title.*)

To

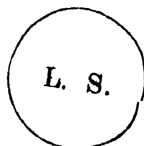
WHEREAS your attendance is required to   on behalf of the   in the above case you are hereby required (personally to appear before this Court) on the   day of   18   , at the hour of   A. M. (and) to bring with you or to send to this Court   .

A sum of Rs.   , being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section*170.

Notice—(1). If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid

(2). If you are to be detained beyond the day aforesaid, a sum of Rs   will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this   day of   18   .



Judge.

THE FOURTH SCHEDULE—*continued.*

No 126.

Another Form.

No. *of Suit.*

IN THE COURT OF AT

Plaintiff.
Defendant.

(*Name, description and address.*)

To

You are hereby summoned to appear in this Court in person on the day of at in the forenoon, to give evidence on behalf of the plaintiff (*or* the defendant) in the above-named suit, and to produce (*here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*), and you are not to depart thence until you have been examined (*or* have produced the document) and the Court has risen, or unless you have obtained the leave of the Court.

FORMS OF DECREES.

No 127.

SIMPLE MONEY-DECREE

(*Title*)

Claim for

THIS cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the the sum of Rs. , with interest thereon at the rate of per cent. per from to the date of realization of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

THE FOURTH SCHEDULE—*continued.*

Costs of Suit.

PLAINTIFF.	Rs. A. P.	DEFENDANT.	Rs. A. P.
1. Stamp for plaint		Stamp for power	
2. Do. for power		Do. petition ...	
3. Do. exhibits ..		Pleader's fee ...	
4. Pleader's fee on Rs		Subsistence for witnesses ...	
5. Translation-fee .		Service of process	
6. Subsistence for witness for attendance .		Translation-fee ...	
7. Commissioner's fee		Commissioner's fee	
8. Service of process			
9. &c.			
TOTAL ..		TOTAL	

GIVEN under my hand and the seal of the Court, this day of 18 .

(L S)

Judge.

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(*Title*)

It is ordered that it be referred to the Registrar (*or* Taxing Officer) to take an account of what is due to the plaintiff for principal and interest on the mortgage (*or* lien) mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that

THE FOURTH SCHEDULE—*continued.*

he Registrar [*or* Taxing Officer] do declare in Court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs, and upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such reconveyance being made, and documents being delivered up, the Registrar (*or* Taxing Officer) shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises (*or* the premises subject to the said lien) be sold with the approbation of the Registrar (*or* Taxing Officer). And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE FOR FORECLOSURE.

(*Title.*)

WHEREAS it appears to the Court that the defendant has not paid into court the sum which was on the day of last declared in court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of

THE FOURTH SCHEDULE—*continued.*

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure

(*Title*)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In Creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. An account be taken of the legacies given by the testator's will

In suits by next-of-kin—

An enquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin (*or* one of the next of kin) of the intestate.

(*After the first paragraph, the Order will, where necessary, order, in a creaditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow ommiting the first formal words The form is continued as in a creditor's suit.*

3 An account of the funeral and testamentary expenses

4. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An enquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the day of next, pay into court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order to his use.

THE FOURTH SCHEDULE—*continued.*

7. And that if the *Registrar* shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased, that the same be sold accordingly and the proceeds paid into court.

8. And that Mr. *E. F* be Receiver in the suit (*or* proceeding), and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of Registrar (and shall give security by bond for the due performance of his duties to the amount of rupees).

9. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

(*a*) an inquiry what immovable property the deceased was siezed of or entitled to at the time of his death ;

(*b*) an inquiry what are the incumbrances (if any) affecting the immovable property of the deceased, or any part thereof ;

(*c*) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent t the sale hereinafter directed.

10. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered, that *G. H.* shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the apporval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submittied to the Judge to settle.

12. And it is further ordered, that for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear

THE FOURTH SCHEDULE.—*continued.*

to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered, that the above inquiries and accounts be made and taken and that all other acts ordered to be done be completed before the day of and that the Registrar do certify the result of the inquiries, and the accounts and that all other acts ordered are completed and have his certificate in that behalf ready for the inspection of the parties on the day of

14. And lastly, ordered, that this suit (*or* matter) stand adjourned for making final decree to the day of

(*Such part one of this order is to be used as is applicable to the particular case.*)

No. 131.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

Section 213 of the Code of Civil procedure.

1. IT is ordered that the defendant do on or before the day of pay into court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs for interest, at the rate of Rs. per centum per annum, from the day of to the day of amounting together to the sum of Rs.

2. Let the Registrar (*or* Taxing officer) of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows :—

(*a*)—The costs of the plaintiff to Mr. , his attorney (*or* pleader), and the costs of the defendant to Mr. , his attorney (*or* pleader).

(*b*)—And (*if any debts are due*) with the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid; let the sums found to be owing to the several creditors mentioned in the schedule to the Registra's certificate,

THE FOURTH SCHEDULE—*continued.*

together with subsequent interest on such of the debts as bear interest, be paid ; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them

3. And if there should then be any residue, let the same be paid to the residuary legatee.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTON IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff ;

2. And it is ordered, that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered, that the defendant do within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registerar shall certify to be due for principal and interest ;

4. And it is ordered, that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN ADMINISTRATION SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered, that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows :—

THE FOURTH SCHEDULE—*continued.*

(a)—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, A. B., and C., his wife, in her right, as the sister and one of the next-of-kin of the said E. F., the intestate.

(b)—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said E. F., the intestate.

(c)—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP

Section 215 of the Code of Civil Procedure.

(*Title.*)

IT is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette* &c.

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An accounts of the credits, property and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealing and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settle accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint

THE FOURTH SCHEDULE—*continued.*

mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No

A. B of

against

C. D. of

IT is ordered that the fund now in court, amounting to the sum of Rs. be applied as follows :—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate amounting in the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs. .

[*This costs must be ascertained before the decree is drawn up*].

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-asserts, of the sum of Rs. being the residue of the said sum of Rs. now in court to the defendant as his share of the partnership-assets.

(*Or.* And that the remainder of the said sum of Rs. be paid to the said plaintiff (*or defendant*) in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.)

THE FOURTH SCHEDULE—*continued.*

And that the defendant (*or* plaintiff) do on or before the day of pay to the plaintiff (*or* defendant) the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 134

CERTIFICATION OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

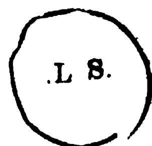
A. B. of

against

C. D. of

CERTIFIED that no (*or* partial, *as the case may be, and if partial, state to what extent*) satisfaction of the decree of this Court in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

THE FOURTH SCHEDULE—*continued.*

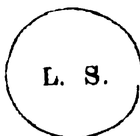
IN THE COURT OF AT
Civil Suit, No. of 18
Miscellaneous, No. of 18 .

A. B. of
against
C. D. of

To

WHEREAS
has made application to this Court for execution of decree in Civil Suit No. 18 , this is to give you notice that you are to appear before this Court on the day of 18 , either in person or by a pleader of this Court, or agent duly authorized and instructed to show case, if any why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18


L. S.

Judge.

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(*Title*).

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered, by decree of this Court, passed on the day of 18 , in Suit No. of 18 , to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs.

THE FOURTH SCHEDULE—*continued.*

Decree		
Principal		
Interest		
Costs		
Costs of decree ...		
Interest thereon ...		
Total of attachment		
Total ...		

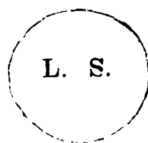
has not been paid.

These are to command you to attach the movable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said shall pay to you the said sum of Rs. together with Rs. , the costs of this attachment, to hold the same until further orders from this Court.

You are further commanded to return this Warrant on or before the day of 18 , with an endorsement certyfing the date and manner in which it has been executed, or why it has not been executed.

Given under my hand and the seal of the court, this day of 18 .

Schedule.



Judge.

No. 137.

Warrant to the Bailiff to Give Possession of Land, &c.

Section 263 of the Code of Civil Procedure.

(*Title.*)

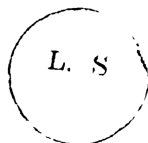
To the Bailiff of the Court.

Whereas , in the occupancy of has been decreed to , the plaintiff in this suit: you are hereby directed to put the said in possession

THE FOURTH SCHEDULE—*continued.*

of the same, and you are hereby authorized to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 18 in favour of for Rs. : in its ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following preperty in the possession of the said that is it to say, to which the defendant is entitled, subject to any claim of the said , and the said is hereby prohibited and restrained, until the further ordered of this Court, from delivering the said property any to person or persons whomsoever.

THE FOURTH SCHEDULE—*continued*

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 in favour of for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said be, and you are hereby, prohibited and restrained, until the further order of the Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

THE FOURTH SCHEDULE—*continued.*

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &C.

Section 268 of the Code of Civil Procedure.

(Title)

To

Defendant, and to , Manager of Company.

WHEREAS has failed to satisfy a degree passed against on the day of 18 , in Civil Suit, No. of 18 in favour of for Rs : it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court from making any transfer of share in the aforesaid Company, namely, or from receiving payment of any dividents thereof , and you , the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer or mking any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(*Title.*)

To

Defendant.

WHEREAS you have failed to satisfy a degree passed

THE FOURTH SCHEDULE—*continued.*

against you on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

SCHEDULE.

(L. S.)

Judge.

No 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECRETARY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Section 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18

A. B. of

against.

C. D. of

To

SIR,

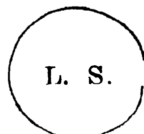
The plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money, now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, &c*).

THE FOURTH SCHEDULE—*continued.*

I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,
SIR,
Your most obedient Servant,

Dated the day of 18 .



Judge.

No 143

ORDER FOR PAYMENT TO THE PLAINTIFF &c, OF MONEY, &c, IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

Miscellaneous, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil suit, No of 18 , passed on the day of 18 , in favour of for Rs. : it is ordered that the property so attached, consists of Rs in money, and Rs. in Currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said , to , and that the said property so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a suffici-

THE FOURTH SCHEDULE—*continued*

ent part thereof to satisfy the said decree, shall be paid over to the said , and the remainder, if any, shall be paid to you, the said

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit. No. of 18

Miscellaneous, No. of 18

A. B. of

against

C. D of

To

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Civil Suit, No. of 18 , this is to give you notice to appear before this Court on , the day of , 18 , either in person or by a pleader of the Court duly, instructed, to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

THE FOURTH SCHEDULE—*continued*

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure.

IN THE COURT OF AT
Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .
A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving days' previous notice, by affixing the same in this Court-house, and after making due proclamation, * the property attached under a warrant from this Court dated the day of 18 , in execution of a decree in favour of in suit No. of 18 , or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified.

THE FOURTH SCHEDULE—*continued.*

No 146.

NOTICE TO PERSON IN POSSESSION OF MOVABLE PROPERTY SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

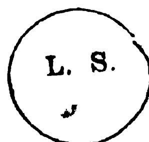
against

C. D. of

To

WHEREAS has been the purchaser at a sale by auction in execution of the decree in the above suit of now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

THE FOURTH SCHEDULE—*continued*.

To

and to

WHEREAS

has become the purchaser at a public sale in execution of the decree in the above suit of certain debt due from you to you , that is to say , it is ordered that you be and you are hereby prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court, this day of

L. S.

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of
against
C. D. of

To

and Manager of Company.

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of certain shares in the above Company, that is to say of standing in the name of you , it is ordered

THE FOURTH SCHEDULE—*continued*

that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon : and you , Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 149.

ORDER CONFIRMING SALE OF LAND, &C.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of

against.

C. D. of

WHEREAS the

following land (*or* immovable property) was on the day of 18 sold by the Bailiff of this Court in execution of the decree in this suit ; and whereas sixty days have elapsed and no application has been made (*or* objection allowed) to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

THE FOURTH SCHEDULE—*continued*

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

THIS is to certify that has been declared the purchaser at a sale by public auction on the day of 18 of the in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of

L. S.

Judge.

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against.

C. D. of

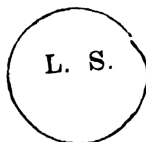
To THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at a sale in execution of decree in Civil Suit, No. of 18 ; and whereas such land in the

THE FOURTH SCHEDULE—*continued.*

possession of , you are hereby ordered to put the said , the certified purchaser, as aforesaid, into possession of the said and if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 152

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of
against
C. D. of

To

Collector of

SIR,

In answer to your communication No. , dated representing that the sale in execution of decree in this suit of and, lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you that you are authorized to make provision for the

THE FOURTH SCHEDULE—*continued.*

satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of

I have the honour to be,
SIR,
Your most obedient Servant.

L. S.

Judge.

No. 153.

ORDER FOR COMMITTAL FOR RESISTING, &c., EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.
(*Title.*)

To

WHEREAS it appears to the Court that has without just cause resisted (*or* objected) the execution of the decree of the Court passed against on the, day of 18 , Civil Suit, No. of 18 whereby certain land or immovable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

THE FOURTH SCHEDULE—*continued*

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

Principal ...			
Interest ...			
Costs ...			
Execution ...			
TOTAL ...			

WHEREAS was adjudged by a decree of the Court, in No. of 18 , dated 18 , to pay to the plaintiff the sum of Rs as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of 18 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 155.

NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE 187 .

B No.

A. B. v. C. D.

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim (*or* the plaintiff's claim for, &c.).

To Mr. X. Z ,
the Plaintiff's Pleader,
Z ,
Defendant's Pleader.

No 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A B. of
against
C. D. of

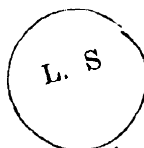
To

WHEREAS the evidence of is required by the in the above suit ; and whereas you are requested to take the examination on interrogatories (*or* viva voce) of such

THE FOURTH SCHEDULE—*continued.*

witnesses and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it my be taken (process to require the attendance of the witness will be issued by this Court on your application.)*

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Section 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT ,

Civil Suit, No. of 18 .

A. B. of
against
C. D. of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for , should be issued; you are hereby appointed Commissioner for the purpose of (process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or

* Not necessary where the commission goes to another Court.

THE FOURTH SCHEDULE—*continued*

inspect, will be issued by this Court on your application.)*

A sum of Rs , being your fee in the above, in herewith forwarded.

No 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF AT

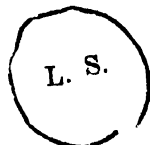
Civil Suit, No. of 18 .

A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to , these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day of .



Judge.

* Not necessary where the commission goes to another Court.

THE FOURTH SCHEDULE—*continued*

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil suit. No. of 18 .

A B. of

against

C. D. of

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the defendant to answer any judgment that may be passed against in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of securioty, which has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit; or if judgment be given against , until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of

L. S.

Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B cf

against

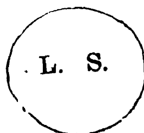
C. D. of

THE FOURTH SCHEDULE—*continued.*

To the Bailiff of the Court.

Whereas has proved to the satisfaction of the Court that the defendant in the above suit these are to command you to call upon the said defendant on or before the day of either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

Given under my hand and the seal of the Court, this day of 18 .



Judge.

No. 161.

Attachment before Judgment, on Proof of Failure to furnish Security.

Section 485 of the Code of Civil Procedure

In the Court of at .
Civil Suit, No. of 18 .
A. B. of
against
C. D. of

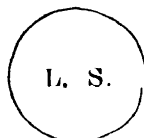
To the Bailiff of the Court.

Whereas , the plaintiff in this suit, has applied to the Court to call upon , the defendant,

THE FOURTH SCHEDULE—*continued*

to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security which has failed to do ; these are to command you to attach the property of the said to keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of
against
C. D. of

To

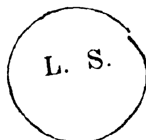
Defendant.

It is ordered that you the said be, and you are hereby, prohibited and restrained until the further order of

THE FOURTH SCHEDULE—*continued*

this Court from receiving from the following property in the possession of the said that is to say to which the defendant is entitled, subject to any claim of the said and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the asid property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of

against.

C. D. of

To .

Defendant

IT is ordered that you the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all person be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court, this day of 18 .

SCHEDULE.

L. S.

Judge.

No. 161.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

IT is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the (money now in hands belonging to the said defendant, *or* debts, *as the case may be, describing them*) and that the said be and hereby prohibited and restrained, until the further order of this Court, from making payment of the said (money, &c.) or any part thereof, to any person whomsoever.

THE FOURTH SCHEDULE—*continued*

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge

No. 165.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No of 18 .

A. B. of

against

C. D. of

To Defendant and to

Manager of Company.

It is ordered that , the defendant, be and hereby prohibited and restrained, until the further order of the Court, from making any transfer of shares being in the aforesaid Company, or from receiving payment of any dividends thereof, and you Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

THE FOURTH SCHEDULE—*continued.*

No. 1r6.

TEMPORARY INJUNCTIONS.

Upon motion made unto this Court by , pleader of (*or* Counsel for) the plaintiff, A. B., and upon reading the petition of the said plaintiff in this matter filed (this day) (*or* the plaint filed in this cause on the day of , *or* the written statement of the said plaintiff filed on the day of) and upon hearing the evidence of and in support thereof, (*if after notice and defendant not appearing : add*, and also the evidence of as to service of notice of this motion upon the defendant, C. D) This Court doth order that an injunction be awarded to restrain the defendant, C. D , his servants, workmen and agents from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned (*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing of this motion mentioned) being No 9. Oilmongers Street, Hindupur, in the Taluq of and from selling the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this day of 187 .

Civil Judge.

(*Where the injunction is sought to restrain the negotiation of a bill, note or security, the ordering part of the order may run thus :—*) to restrain the defendants and from parting with out of the custody of them or any of them, or endorsing, assigning or negotiating the promissory note in question, dated on or about the &c., mentioned in the plaintiff's plaint (or petition) and the evidence heard at this motion, until the hearing of this cause, or until the further order of this Court.

(*In Copyright cases*) to restrain the defendant, C. D., his servants, agents or workmen from printing, publishing, or vending a book, called , or any part thereof, until the, &c.

(*Where part only of a book is to be restrained*) to restrain the defendant, C. D , his servants, agents or workmen from printing, publishing, selling, or otherwise disposing

THE FOURTH SCHEDULE—*continued.*

of such parts of the book in the plaint (*or* petition and evidence, &c.,) mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled (*or* which is contained in page to page both inclusive) until the , &c.

(*In Patent cases*) to restrain the defendant, C. D., his agents, servants and workmen, from making or vending any perforated bricks (*or, as the case may be*) upon the principal of the inventions in the plaintiff's plaint (*or* petition, &c., *or* written statement, &c) mentioned, belonging to the plaintiffs, or either of them during the remainder of the respective terms of the patents in the plaintiff's plaint (*or, as the case may be*) mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, *&c.*

(*In Case of Trade-marks*) to restrain the defendant, C. D., his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking (*or, as the case may be*) described as or purporting to be blacking manufactured by the plaintiff, A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint (*or* petition, &c) mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, A. B , until the, &c.

(*To restrain a partner from in any way interfering in the business*) to restrain the defendant, C. D., his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security, in the name of the partnership.

THE FOURTH SCHEDULE—*continued*

firm of B. & D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. & D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking, until the, &c.

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF . AT .

A B. of
against
C. D. of

TAKE notice that I. A. B., intend to apply at the sitting of the Court at . aforesaid, on the day of for an injunction to restrain C. D. from further prosecuting a suit which he has commenced against me in , to recover damages for the breach of the contract for the specific performance of which this suit was commenced (*or* to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, *or* from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, *or, as the case may be.*)

Dated this day of 18 .

To C. D.

A B

(N. B.—*Where the injunction is to be applied for against a party whose name and address does not appear upon any proceeding already filed in the suit, it must be stated in full to enable the proper officer to serve the notice*)

THE FOURTH SCHEDULE—*continued*.

No. 169.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby (subject to your giving security to the satisfaction of the Registrar) appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent, upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 18 .

(L. S.)

Judge.

THE FOURTH SCHEDULE.—*continued.*

No. 169.

BOND TO BE GIVEN BY RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT .
Civil Suit, No. of 18 .
A. B. of
against
C. D. of

KNOW all men by these presents, that we, I. J. of, &c., and K. L. of, &c., and M. N. of, &c., are jointly and severally bound to G. H. Registrar of the Court of in Rs , to be paid to the said G. H. or his attorney, executors, administrators assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by A. B. against C. D for the purpose of (*here insert object of suit*).

And whereas the said I. J. has been appointed, by order of the above-mentioned Court to receive the rents and profits of the immovable property, and to get in the outstanding movable property of O P., the testator in the said plaint named.

Now the condition of this obligation is such, that if the above bounden I. J. shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immovable property, and in respect of the movable property of the said O P. (*or, as may be*) at such period as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I J.
K. L.
M N.

THE FOURTH SCHEDULE.—*continued.*

Signed and delivered by the above-bounded in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.*

No. 170

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES

Section 508 of the Code of Civil Procedure.

(Title.)

To

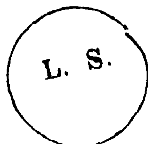
WHEREAS the above-named plaintiff and defendant have agreed to refer the matters in differance between them in the above suit to your arbitration and award, you are hereby appointed accordingly to determine all the said matters in difference between the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

THE FOURTH SCHEDULE.—*continued.*

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

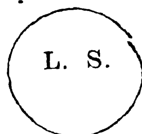
(*Title.*)

Upon reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff and for the defendant, it is ordered, by and with the consent of all the parties that all matters in difference in this suit, including all dealings and translations between all parties, be referred to the final determination of

, who is to make his award in writing and submit the same to this Court, togther with all proceedings, depositions and exhibits in this suit, within one month from the date hereof And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrator shall have all such powers or authorities as are vested in arbitrators under the Code, of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and than the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

THE FOURTH SCHEDULE—*continued.*

GIVEN under my hand and the seal of the Court, this day of 18 .



Judge.

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff

To Defendant.

[*Here enter the defendant's name, description and address.*]

WHEREAS [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under Chapter XXXIX of the Code of Civil Procedure for Rs. principal and interest (*or* Rs. balance of principal and interest) due to him as the payee (*or* indorsee) of a bill of exchange (*or* hundi *or* promissory note), of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service, hereof inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. (*here state the sum claimed*) and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there

THE FOURTH SCHEDULE.—*continued.*

is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

(*Here copy the bill of exchange, hundi or promissory note and all endorsements upon it.*)

No. 173

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(*Name, &c., as in Register*) Plaintiff—Appellant,

(*Name, &c., as in Register*) Defendant—Respondent.

(*Name of Appellant*) (plaintiff *or* defendant) abovenamed appeals to the High Court at (*or* District Court at , *as the case may be*) against the decree of in the above suit, dated the day of , for the following reasons, namely, (*here state the grounds of objection*).

THE FOURTH SCHEDULE—*continued*.

No. 174.

Section 548 of the Code of Civil Procedure.

COURT (*OR* HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES in the year 18 .

Date of Memorandum.	No of appeal.	Appellant.			Respondent.			Decree appealed from.				Appearance.			Judgment.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what, or Amount.

THE FOURTH SCHEDULE—*continued*

No. 175.

NOTICE RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT of AT

, *Appellant, v.* , *Respondent*

APPEAL from the of the Court of dated the day of 18

Respondent.

To

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 18 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided *ex parte* in your absence

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge

[NOTE.—*If a stay of execution has been ordered, intimation should be given of the fact on this notice.*]

176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant v.* , *Respondent.*

APPEAL from the of the Court of dated the day of , 18 ;

THE FOURTH SCHEDULE.—*continued.*

Memorandum Appeal.

, *Plaintiff.*
, *Defendant.*

Plaintiff (*or* defendant) above-named appeals to the Court at against the decree of in the above suit, dated the day of 18 , for the following reasons, namely;

[*here state the reasons*]

This appeal coming on for hearing on the day of 18 , before , in the presence of , for the Appellant, and of for the Respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to , are to be paid by .

The costs of the original suit are to be paid by

GIVEN under my hand, this day of 18 .

L. S.

Judge.

THE FOURTH SCHEDULE—*continued.*

No. 177.

REGISTER OF APPEALS FROM APPELLATE DECREES.
Section 587 of the Code of Civil Procedure.

HIGH COURT AT

REGISTER OF APPEALS FROM APPELLATE DECREES.

Date of Memorandum.	No of appeal.	Appellant.			Respondent.			Decree appealed from.				Appearance.			Judgment.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit and of Appeal.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what, or Amount.

THE FOURTH SCHEDULE—*continued.*

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Plaintiff*, v. , *Defendant*.

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF AT

A. B. of

against

C. D. of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, A. B (*or* C. D), have hitherto employed as my pleader G. H. of in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is J. K. of

A. B. (or C. D.)

No. 180

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar (*place of office*) from *ten* till *four*, except on (*here insert the day on which the office will be closed*) when the office will be closed at *one*

The 'Schedule Districts' referred to in section I of the Code of Civil Procedure are the following (Vide Act XLV of 1874).

THE FIRST SCHEDULE.

(*See section* 1)

PART I.

SCHEDULED DISTRICTS, MADRAS.

I.—*In Ganjam.*

(1.) The Gumsur Maliahs, including Chokapad, (2.) The Surada Maliahs (3) The Chinna Kimedi Maliahs. (4.) The Pedda Kimedi Maliahs (5) The Bodaguda Maliahs. (6.) The Surangi Maliahs. (7) The Parla Kimedi Maliahs. (8) The Muttas of Korada and Ronaba (otherwise called Srikarma). (9.) The Chighatti Maliah. (10.) The Jurada Maliah (11) The Jalantra Maliah. (12) The Mandasa Maliah. (13.) The Budarasi ghi Maliah. (14) The Kuttingia Maliah

II—*In Vizagapatam*

(1.) The Jeypur Zamindari. (2.) Golconda Hills, west of the River Boderu. (3) The Madugol Maliahs. (4.) The Kasipur Zamindari (5) The Panchipenta Maliahs. (6.) Mondemkolla, in the Merangi Zamindari. (7.) The Konda Mutta of Belgam. (8) The Gumma and Konda Muttas of Karpam (9.) The Kottam, Ram and Konda Muttas of Palkonda.

III.—*In the Godavari District.*

(1.) The Bhadrachalam Taluq. (2.) The Rakapili Taluq (3) The Rampa Country.

IV.—*In the Indian Ocean.*

The Laccadive Islands, including Minicoy.

PART II.

SCHEDULED DISTRICTS, BOMBAY

I—The Province of Sindh. II.—The Panch Mahals. III.—Aden. IV.—The villages belonging to the following Mehwassi Chiefs :—

(1.) The Parvi of Kathi. (2.) The Parvi of Nal (3.) The Parvi of Singapur. (4.) Walwi of Gaohalli. (5.) The Wassawa of Chikhli, (6.) The Parvi of Nawalpur.

PART III.

SCHEDULED DISTRICTS, BENGAL.

I.—The Jalpaigori and Darjeeling Divisions. II.—The Hill Tracts of Chittagong. III.—The Santhal Parganas. IV.—The Chutia Nagpur Division. V.—The Mahals of Angul and Banki.

PART IV.

SCHEDULED DISTRICTS, NORTH WESTERN PROVINCES.

I.—The Jhansi Division, comprising the Districts of Jhansi, Jalaun and Lalatpur. II.—The Province of Kumaon and Garhwal III.—The Terai Parganas, comprising—Bazpur, Kashipur, Jaspur Rudarpur, Gadarpur, Kilpuri, Nanak-Mattha and Bilheri. IV.—In the Mirzapur District—(1) The tappas of Agori Khas and south Kon in the Pargana of Agori (2.) The tappa of British Singrauli in the Pargana of Singrauli (3) The tappas of Phulwa, Dudhi and Barha in the Pargana of Bichipar. (4.) The portion lying to the South of the Kaimor Range V.—The family Domains of the Maharaja of Benares, comprising the following parganas :—Bhadohi and Kheyra Mangror in the Mirzapur District, Kaswa Raja in the Benares District. VI.—The tract of country known as Jaunsar Bawar in the Dehra Dun District.

PART V.

SCHEDULED DISTRICTS, PANJAB.

The Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan, Dera Ghazi Khan, Lahaul and Spiti.

PART VI.

SCHEDULED DISTRICTS, CENTRAL PROVINCES.

Chhattisgarh Zamindaris, viz :—

1. Khariar. 2. Bindra Nawagarh. 3. Sahezpur. 4. Gandai. Silheti. 6. Barbaspur. 7. Thakurtola. 8. Lohara. 9. Gon-

dardehi. 10. Fingeswar. 11. Pandaria. 12. Pendra. 13. Matin. 14. Uprora. 15. Kenda 16 Lapha. 17. Chhuri. 18 Korba. 19. Chapa. 20. Bora Sambhar. 21. Phuljhar. 22. Kolabira. 23. Rampur.

Chanda Zamindaris.

1. Ahiri. 2. Ambagarh Chauki. 3. Aundhi. 4. Dhanora. 5 Dudhmala, 6. Gewarda. 7. Jharapapra. 8. Khutgaon. 9 Koracha. 10. Kotgal. 11. Muramgaon. 12. Panabaras. 13. Palasgarh. 14. Rangi 15. Sirsandi. 16 Sonsari. 17. Chandala, 18. Gilgaon. 19. Pawi Mutanda. 20. Pategaon.

Chhindwara Jagirdaris.

1. Harai. 2. Chhater. 3. Gorakhghat. 4. Gorpani. 5. Baktagarh. 6. Bardagarh. 7. Pachmarhi. 8. Partabgarh. 9. Almod. 10. Sonpur. 11 Bariam Pagara.

PART VII.

The Chief Commissionership of Coorg.

PART VIII.

The Chief Commissionership of the Andaman and Nicobar. Islands.

PART IX.

The Chief Commissionership of Ajmer and Mairwara.

PART X.

The Chief Commissionership of Assam.

PART XI.

The Hill Tracts of Arakan.

PART XII.

The Pargana of Manpur.

PART XIII.

The Cantonment of Morar.

By Notification No. 1651, dated 3rd November 1877, Act XIV of 1874 has been extended to the Districts within the Chief Commissionership of Assam. (See *Gazette of India*, Part I. page 652.)

By Notification No. 1664 A, dated 5th November 1877. Act XIV of 1874 has been extended to the Districts of Darjeeling and Jalpaiguri (called in Act XIV of 1874, the Jalpaiguri and Darjeeling Divisions), excepting that part known as the Western Duars, to which the Act has been already extended; the District of Hazaribag; the District of Lohardugga; the District of Manbhoom; Pergunnah Dhalbhoom, in Singhboom and Mehals of Angal and Banki. (*See Gazette of India*, Part I page 678.)

By Notification No. 1393, dated 21st October 1881, Act XIV of 1874 has been extended to Kolhan in the District of Sighbhoom in the Chota Nagpore Division. (See *Gazette of India* Part 1 page 504).

By Notification No. 1652, dated 3rd November 1877, Act X of 1877, and by Notification No. 1402, dated 31st December, 1880, Act XII of 1879, so much as it amends the Code of Civil Procedure, have been extended to Kamrup, Nowgong, Darrang, Sibsagore, Lakhimpur, Goalpara (excluding the Eastern Duars), Sylhet and Cachar (excluding the North Cachar Hills), except Sections 1 and 3, which are already in force in the said districts (*See Gazatte of India*, Part I, page 652, and Part I dated 1st January 1881, page 2).

By Notificaoion No. 1664 B, dated 5th November 1877, Act X of 1877, and by Notification No. 1259, dated 1st December 1880, Act XII of 1879, so much as it amends the Code of Civil Procedure, have been extended to the Districts of Darjeeling and Jalpaiguri (called in Act XIV of 1874, the Jalpaiguri and Darjeeling Divisions),

District of Hazaribagh.
Do. of Lohardugga.
Do. of Manbhoom.
Pergunnah Dhalbhoom, in Singhbhoom.
Mehals of Angul and Banki.

(*See Gazette of India*, Part I, page 678 and Part I of 1880, page 677).

By Notification No 1393, dated 21st October 1881, Act XII of 1879 has been extended to the Districts of Hazaribagh, Lohardugga and Maubhoom and in Pergunna Dhalbhoom, and Kolhan, in the District of Singbhom (*See Gazette of India*, Part I, p. p 504-507)

